NAVAL WAR COLLEGE

International Law Situations

WITH SOLUTIONS AND NOTES

1939


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INTERNATIONAL LAW SITUATIONS

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PREFACE

"International Law Situations, 1939," has been prepared by Payson Sibley Wild, Jr., Ph. D., professor of international law, Harvard University, and associate for international law at the Naval War College. It covers problems which have been the subject of discussion by members of the senior and junior classes of 1940. In the appendix there are certain laws and proclamations regarding neutrality which are of current interest.

While the conclusions reached are in no way official, the notes afford a convenient survey of material relating to the subjects presented, and they should be of value for purposes of reference.

E. C. KALBFUS,
Rear Admiral, United States Navy,
President, Naval War College.

MAY 31, 1940.

CONTENTS

Situation I

NEUTRAL DUTIES AND STATE CONTROL OF ENTERPRISE

States A and B are at war. Other States are neutral. State C has an island colony, Camla, where there are oil wells operated by the Seeoil Co., a privately incorporated concern in which the C government owns 55 percent of the stock and selects one-half of the directors.

(*a*) State A sends a mission to Camla to purchase the entire output of the wells for the use of its navy. As the Seeoil Co. is about to make the arrangement, State B protests to State C that such a transaction would be a violation of C's neutrality obligations.

(*b*) The Seeoil Co. sends oil to State D, adjacent to State A, to be refined. The *Cora,* a tanker owned by the Seeoil Co. and carrying a cargo of crude oil, is encountered en route from Camla to State D by the *Byron,* a cruiser of State B. The *Byron* seizes the *Cora* on grounds of carrying contraband. The *Cora* though not resisting visit and search, informed the *Byron,* when first summoned to lie to, that the *Cora* was a public vessel of State C.

(*c*) A tanker of State E, the *Elrod,* carrying a cargo of gasoline which the owners of the vessel have purchased from the Seeoil Co. and are transporting to an island airplane base of State A, is visited, searched, and finally seized on grounds of unneutral service by the *Bax,* a cruiser of State B.

Instead of placing a prize crew on board, the *Bax* directs the *Elrod* to proceed to a designated port of State B and sends out an airplane periodically to make certain that the *Elrod* is not deviating.

What are the legal rights in each case?

SOLUTION

(*a*) State C should cancel or refuse to have the agreement made, though it should have the opportunity to prove that the transaction was purely commercial and nonpolitical in character. The evidence in this case, however, does not seem to support any such contention on the part of State C.

(*b*) Visit and search of the *Cora* by the *Byron* was legal.

(*c*) The *Elrod* is not guilty of unneutral service. It is not impossible that the *Elrod* was legally under the control of the *Bax*. The question hinges upon this point: Was the airplane sufficiently in evidence to convince the captain of the *Elrod* that he was watched and under control?

NOTES

THE GROWTH OF STATE CONTROL OVER THE INDIVIDUAL

That governmental controls over business and enterprise, formerly in private hands, are increasing is an obvious fact today. The era of laissez faire is gone. Governments are in business and are regulating business on an ever augmenting scale. The types of ownership and control are exceedingly diverse and vary from the direct State ownership of practically everything in Soviet Russia to State licenses and trade subsidies found in

so-called capitalist countries. In the United States, the Government owns and operates, for example, the Panama Railroad. The Federal Government also exercises control through the form of corporations such as the Tennessee Valley Authority. It establishes banks, like the Export-Import Bank, or supports semipublic financial institutions like the Federal Reserve banks. The French Government has taken over the arms industry and owns stock in great corporations like the Potash concern. The boundary line between what is governmental and what is private can no longer be drawn with any degree of accuracy. Governments may own concerns outright, as previously suggested, they may appoint some of the directors and own a large share of the stock, as in the Anglo-Iranian Oil Co., or they may regulate enterprise through commissions and other types of administrative offices. Any number of examples of State intervention through corporations, export and import regulations, trade monopolies, cartels, and subsidies may be cited, but enough has been said to indicate the fact that more and more human activities are coming to be regarded as lying within the sphere of government.

The effect upon international law of these changes within states has been and must be tremendous. As one writer recently has said:

> International society is in process of a transformation which international law can no longer afford to ignore. . . . It is submitted that all the customary rules touching international state responsibility are, in fact, based upon a particular division of the spheres of state and individual. These rules presuppose that the state has traditionally certain functions, broadly speaking, the conduct of foreign

policy, the control of the armed forces, and certain functions of executive government. . . .

Apart from the duties corresponding to these state functions, the citizens were free to do and move as they liked. In particular, trade and industry was their concern and responsibility. Mercantilism did not influence these international principles, partly because its reign was too brief and not sufficiently universal, but mainly because the principles of international state responsibility were developed during the 19th century, the century of laissez-faire. (W. Friedmann, British Year Book of International Law, 1938, pp. 118–119.)

EFFECT OF STATE CONTROLS UPON INTERNATIONAL LAW

The law between States cannot help being affected by changes in the law within States. International rules are not made in a vacuum, and are necessarily the product of the way of life of the international community. The increasing domestic collectivism has affected both State immunity and State responsibility. States have been prone to extend the historic sovereign immunities, granted to governmental agencies in days when governmental business was small, to the new forms of State activity. At the same time, the more a State has become involved in new enterprises, the more responsibility it has had to assume. The problems of immunity were encountered first, and became acute in conection with the shipping business. When public vessels were granted immunity from local jurisdiction in the case of the *Schooner Exchange* vs. *McFaddon* (7 Cranch 116) no great inconvenience in maritime affairs could arise, because the bulk of the world's shipping was in private hands. Later on, toward the end of the nineteenth century, however, when public ships of a

commercial character began to appear, the difficulties of the immunity doctrine became more apparent. If immunity was to be granted solely on the basis of ownership, then all governmentally owned vessels would be free from suits and local controls, a most intolerable situation. The British and American courts, however, have continued to grant immunity to public vessels whether warships or freighters, though in practice the administrations in these countries have recognized a distinction on the basis of the use to which Government ships are put.

The tendency, therefore, is to separate acts of State from acts of a commercial sort and not to claim immunity for the latter. Belgian, Italian, and Egyptian courts have taken the lead in assuming jurisdiction over ships which, though owned by governments, are operating in what seems to be a nonpolitical or business capacity. The Soviet Union has not claimed immunity for its commercial agencies, and the Brussels Convention for the Unification of Certain Rules Concerning the Immunities of Governments Vessels, which went into effect in 1937, stated in article I that "seagoing vessels owned or operated by States * * * are subject in respect to claims relating to the operation of such vessels * * * to the same rules of liability and to the same obligations as those applicable to private vessels * * *" (Hudson International Legislation, III, 1837). Also article 26 of the Harvard Draft Code (American Journal of International Law 1932, pp. 716) states that:

> A state need not accord the privileges and immunities to such juristic persons as corporations or associations for

profit separately organized by or under the authority of another state, regardless of the nature and extent of governmental interest therein or control thereof.

In connection with legal immunities therefore, a line has been drawn between the actions of a government in its public capacity and those in a private capacity. In regard to the responsibility of States, the issues have arisen later than they did with immunities, and as yet the same distinction between the types of government operations has not been so clearly apparent.

NEUTRALITY AND STATE RESPONSIBILITY

In connection with neutrality, questions of responsibility are grave indeed. According to the principles of traditional neutrality, every extension of government into the realm of finance, trade, and business should mean a duty not to permit the sale or transfer of the articles or commodities under such public control to a belligerent power. Logically, under such a doctrine, a completely socialist State like Soviet Russia today could sell nothing and could permit the export of no products to States engaged in a war in which Russia was neutral. The law on this subject, however, has not clearly crystallized to date. Precedents are relatively few and no dogmatic answer to the problem involving the Seeoil Co. can be rendered.

Certain fundamental distinctions basic to the law of neutrality need to be examined. First of all, there is the distinction between the use of neutral territory as a base and its employment as a source of commercial supply. Armies and expeditions may not go out from neutral territory but belligerent governments may obtain supplies com-

mercially. Though goods obtained commercially may be far more valuable to a belligerent than the assistance obtained from an expedition, the distinction probably will continue to be recognized because of its advantages to belligerents and neutrals alike. As long as States wish to buy and sell from and to each other they doubtless will cling to this convenient though not always strictly logical line of demarcation between the commercial and the military.

Another underlying distinction has been that between what a government may do and what a private citizen may do. The law of neutrality forbids neutral governments to give aid to a warring power, but permits private citizens to carry on trade relations. In regard to the latter, neutral governments have no responsibility except to apply impartially any regulations or restrictions which they may impose. These stipulations have been incorporated into the following conventions:

Hague Convention V of 1907, Article 9. Every measure of restriction or prohibition taken by a neutral power . . . must be impartially applied by it to both belligerents.

Hague Convention XIII, Article 9. A neutral power must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, road-steads, or territorial waters, of belligerent warships or of their prizes.

Article 6. The supply, in any manner, directly or indirectly, by a neutral power, of warships, ammunition, or war material of any kind, is forbidden.

The question inevitably arises as to whether the expansion of government controls obliterates this distinction between governments and private citizens. Are governments going to be permitted to assume a commercial character and so be free to

sell to belligerents, or must the sale by any governmentally owned or controlled agency be completely prohibited? If the basic aim of the long-standing law is to thwart governmental contacts with a belligerent, then logically if the same rules are to persist, governmental instrumentalities must be prohibited from making deals with warring powers. If the aim, however, was merely to prevent political partiality, and if governments in business can really act nonpolitically, should not State-owned or operated concerns be allowed to function as do private persons or concerns?

The answers to these questions by various authorities have differed. Prof. Lawrence Preuss, of the University of Michigan (Some Effects of Governmental Controls on Neutral Duties, Proceedings, American Society of International Law, 1937, pp. 108–119), tends to take the rather strict line that State concerns must abstain entirely from belligerent contacts, and the Harvard Draft Code (American Journal of International Law, Supplement, July 1939, p. 239) also states "The rule of international law should be and probably is that a state when neutral is forbidden to do certain things, no matter in what capacity or through what agency it does them." The drafters of this code, however, went on to say by way of modification, that "It might be argued that since a neutral state is not under a duty to prevent its nationals from doing certain things which it should refrain from doing itself, so it is not under a duty to refrain from doing those acts in its private capacity, provided that it accepts the consequence of submitting its property to the belligerent rights of capture and condemnation."

A different line is taken by Friedmann (op. cit.) who argues that abstention would be impractical, that it would penalize States unduly for engaging in socialistic experiments and would deprive other powers of needed supplies. It does seem as though common sense and the actual behavior of States dictate the drawing of some kind of a line between a State's sovereign and private capacities. Socialist-minded nations will not feel bound to abstain from business contacts. The solution of the problem in hand, therefore, will be sought upon the basis of what appear to be the actual needs and the legitimate aims of States today.

THE CRITERION OF PRIVATE CAPACITY

The endeavor to discover whether a State is operating in its sovereign or personal character is immensely difficult, but the elusive nature of the problem should not be allowed to halt the search. One must commence by enquiring as to the fundamental reason for the origin of the rule barring governmental aid or sales to a State at war, and one discovers that it was designed to prevent political manipulation in favor of one of the parties to a conflict. At the core of neutrality lies impartiality, and governmental assistance, even though extended with an effort at helping both sides in like fashion, seemed incompatible with the requirements of genuine impartiality. Abstention (for governments) became the rule. Political favoritism was to be avoided, and with governments out of the picture, and with most of the commercial area under private control, the State was not politically enmeshed in the conflict. A barrier against *political*

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favors was the object, with the prohibition on government aid serving merely as a means, not as an end in itself.

If, as suggested, the *nature* of the deal, whether political or commercial, and not the fact of government ownership or control, is to be the test for determining legal responsibility, and if it is political favoritism and political assistance rather than governmental supervision as such which gives taint to the transaction, then what is to be looked for in this quest for a criterion as to private capacity is the amount or extent of political bias or influence manifest in any given arrangement between a belligerent government and a corporation or agency owned or controlled by a neutral State. The sending of armies, warships, and military supplies by one government to another is clearly political; likewise the granting of loans by a government bank would be political, prima facie. All such acts could properly be regarded as illegal because they could only be made with a definite political end in view. In an earlier age when the functions of government were fewer and when they were confined mainly to matters of police and defense, the legal ban on governmental assistance affected only this relatively narrow range of political activity. Now that governments are engaged in all sorts of enterprise taken over from the private domain, they are increasingly involved in matters more commercial than political. The prohibition against governmental transactions with a belligerent, designed to prevent assistance for *political* purposes, is no longer so essential where business and trading interests are concerned.

To determine private capacity by means of hard and fast formulae seems unsatisfactory. Percentages of stock, numbers of directors, or forms of control do not in themselves furnish an adequate index of the amount of political direction involved. Where a government owns and operates a railway in very businesslike style, transportation of belligerent goods over such a line would not appear to affect the State's neutrality. On the other hand, industries mainly under private ownership may be guided or controlled indirectly by a government, in a very partial manner. The question to be asked, therefore, is whether the government in any given situation is active for political reasons. At issue are affirmative, political acts. If the neutral government merely allows its railways or shipping lines to operate without overt interference on its part or if it follows a policy of laissez faire, passively leaving matters to geography and the course of events, neutrality duties would not be infringed. It is admitted that the abandonment of a definite criterion such as government ownership or a specified amount of control involves great difficulties. It means a search into the motives and into the details of each particular act, and it would be far easier to apply some mechanically rigid rule by which one might know immediately whether a certain act were illegal or not, but in the light of governments' obvious desire and need to continue trading, it is essential to seek a criterion of private capacity which fits the practical needs of the world today.

APPLICATION OF PRIVATE CAPACITY CRITERION TO THE PRESENT CASE

The transaction between State A and the Sceoil Co. is of doubtful legality, and in the circumstances State C should prevent it. This contract seems no ordinary one of a commercial nature. The political influence of State C in its official capacity seems to show through the entire set of negotiations. The fact that State A sent a mission to Camla brings in an element of diplomatic relations between States whch evidently goes beyond a purely business deal. Also the fact that State C is to purchase the *entire* output of the wells for the use of its navy makes the contract seem decidedly political. In a situation of this sort, State C should be extremely careful and should not allow any agreements to be made which have definitely unneutral implications. The law on this subject is admittedly fluid, but after more experience and with more precedents, a private capacity criterion should emerge as clearly as it already has in connection with immunity from jurisdiction.

State C should be given the opportunity to demonstrate that the contract was commercial. The deal seems suspiciously political, and the burden of proof is upon State C, but the latter can cite precedents from the war of 1914–18 to show that neutral governments may agree to sell to as well as to buy from belligerent powers. Government-sponsored organizations like the N. O. T. in the Netherlands and the S. S. S. in Switzerland negotiated directly with States at war, and on August 5, 1916, in an agreement between Great Britain and Norway, the latter promised to supply Britain with 85 percent

of its exports of fish. (See P. G. Vigness, "Neutrality of Norway and the World War"; Amry Vandenbosch, "Neutrality of the Netherlands During the World War"; Harvard Draft Code, "Rights and Duties of Neutral States in Naval and Aerial War"; American Journal of International Law, Supplement, July 1939, pp. 235–245; Harvard Draft Code, "Competence of Courts in Regard to Foreign States"; American Journal of International Law, Supplement 1932, Comments on Articles 12, 26, and 27; Friedmann, op. cit., and Preuss op. cit.)

VISIT AND SEARCH OF PUBLIC VESSELS

In the light of the evidence previously cited to the effect that State-owned vessels engaged in commercial enterprise are not to be regarded as immune from jurisdiction, it is apparent that a tanker like the *Cora,* though owned by a company in which the State owns a majority of the shares, cannot claim immunity from visit and search. It is to be treated as a private vessel. In the early spring of 1940 warships of Great Britain intercepted Soviet vessels in the Pacific Ocean, visited and searched them, and ordered them into port for prize-court adjudication. The Government of the Soviet Union allegedly protested that these ships were immune from visit and search because of their State ownership. Such a claim was inconsistent with previous Soviet policy in regard to its merchant marine, and evidently was not taken seriously by any of the parties concerned at the time. Exemption from the exercise of belligerent rights of war for State-owned merchant craft is unnec-

essary and would be asking an unwarranted sacrifice from a belligerent naval power.

That State craft are not all entitled to the immunities accorded warships has been recognized in international conventions:

Convention on Commercial Aviation, Havana 1928, Article III (b): All state aircraft other than military, naval, customs and police aircraft shall be treated as private aircraft and as such shall be subject to all the provisions of the present convention.

Hague Convention XI, Relating to the Exercise of the Right of Capture in naval war. Article II: The inviolability of postal correspondence does not exempt a neutral mail ship from the laws and customs of maritime war as to neutral merchant ships in general. The ship, however, may not be searched except whenever absolutely necessary, and then only with as much consideration and expedition as possible.

THE "ALTMARK" CASE

On February 16th, 1940, the British destroyer *Cossack* forced the German vessel *Altmark* into a Norwegian fjord and removed three-hundred-odd captives who were on board. The *Altmark* had formerly been a merchant tanker but at the time of the incident was a naval auxiliary flying the German official service flag. Although the *Altmark* case deals with a neutral State's duties in regard to belligerent ships in territorial waters, and though it does not concern belligerent rights over neutral public ships on the high seas, it is of considerable general importance and involves interesting problems concerning jurisdiction over vessels, both public and private, within the territorial limits. The British government and some international lawyers charged that Norway had failed in its duties and that it should not have allowed the

Altmark to transport prisoners along its coast. More careful examination of the situation, however, indicates that Norway had no obligation to halt the *Altmark,* to force it to leave, to intern it, or to release the prisoners. Following is the opinion of Prof. Edwin Borchard of Yale University:

As a public ship the *Altmark* was free from visit and inspection except possibly to verify her conformity with Norway's neutrality regulations. Norway's jurisdiction over the vessel was at best extremely limited and under no circumstances would it seem that Norway was privileged to break the relation between the master and the captives on board and release them. Even if the ship had anchored or docked in Bergen, that legal relationship could not have been legally broken. In the Franco-Prussian War, a French war vessel entered the Firth of Forth with German prisoners on board, whereupon the German Consul at Leith asked Great Britain to release the prisoners in accordance with Britain's alleged neutral duty. The British government replied that the French warship was privileged to enter and to remain for a limited time, that the prisoners on board did not become free, that while on board they were under French jurisdiction, and that the neutral authorities had no right to interfere with them. In an earlier case arising during the Crimean War, Attorney General Cushing in an exhaustive opinion held that a United States court had no power to release the captive seamen on board the Russian vessel *Sitka* brought into San Francisco as a prize by a British man-of-war.

Nor is it material what the *Altmark's* papers showed, provided she was a public vessel. Even if she were a merchant vessel, Norway as a coastal state had no power to punish her for carrying false papers, or, in either event, for the false character of the captain's answers to the questions put. The British seamen were not technically prisoners of war because they were not part of the armed forces of a belligerent nor ancillary thereto. Even if it should be said that the *Altmark* was violating international law by taking them to Germany instead of leaving them at the nearest port, it was hardly Norway's duty to correct the violation. The term

"prison ship" is not a term of art and hardly clarifies the legal position. The *Altmark* would seem to have been under no duty to account to Norway for what she was carrying, nor was Norway bound to inquire whether she was passing through territorial waters to escape capture. Such a motive which was doubtless accurate, does not diminish the privilege of using the territorial waters for transit (American Journal of International Law, April 1940, pp. 292–294).

SEIZURE FOR CONTRABAND

Though there is no binding general international agreement as to what articles should properly be considered contraband, the seizure of both the *Cora* and the *Elrod* appears legitimate. Oil and gasoline are now of the utmost importance in warfare and may rightly be considered to be absolute contraband. The basis for the seizure of the *Cora,* which was carrying oil to a State adjacent to a belligerent, was that of continuous voyage, a doctrine recognized as applicable to absolute contraband in the unratified Declaration of London of 1909 and extensively invoked in the war of 1914–18 and in the war which began in September 1939. The law is therefore clear in regard to the *Cora* but is by no means as definite in regard to the extensions of the doctrine of continuous voyage in both great wars. In these two conflicts the Allied States never proclaimed a formal blockade of Germany but relied upon contraband, continuous voyage, and reprisal orders which carried the doctrine to almost unrecognizable lengths.

CONTRABAND LISTS OF THE 1939–40 WAR

Great Britain:

"SCHEDULE I

"*Absolute Contraband*

"(a) All kinds of arms, ammunition, explosives, chemicals, or appliances suitable for use in chemical warfare and machines for their manufacture or repair; component parts thereof; articles necessary or convenient for their use; materials or ingredients used in their manufacture; articles necessary or convenient for the production or use of such materials or ingredients.

"(b) Fuel of all kinds; all contrivances for, or means of, transportation on land, in the water or air, and machines used in their manufacture or repair; component parts thereof; instruments, articles, or animals necessary or convenient for their use; materials or ingredients used in their manufacture; articles necessary or convenient for the production or use of such materials or ingredients.

"(c) All means of communication, tools, implements, instruments, equipment, maps, pictures, papers and other articles, machines, or documents necessary or convenient for carrying on hostile operations; articles necessary or convenient for their manufacture or use.

"(d) Coin, bullion, currency, evidences of debt; also metal, materials, dies, plates, machinery, or other articles necessary or convenient for their manufacture.

"SCHEDULE II

"*Conditional Contraband*

"(e) All kinds of food, foodstuffs, feed, forage, and clothing and articles and materials used in their production."

(The Department of State Bulletin, September 16, 1939, Vol. I, No. 12, Publication 1377, pp. 250–251.)

Germany:

"ARTICLE 1

"The following articles and materials will be regarded as contraband (absolute contraband) if they are destined for enemy territory or the enemy forces:

"*One.* Arms of all kinds, their component parts and their accessories.

"*Two.* Ammunition and parts thereof, bombs, torpedoes, mines and other types of projectiles; appliances to be used for the shooting or dropping of these projectiles; powder and explosives including detonators and igniting materials.

"*Three.* Warships of all kinds, their component parts and their accessories.

"*Four.* Military aircraft of all kinds, their component parts and their accessories; airplane engines.

"*Five.* Tanks, armored cars and armored trains; armor plate of all kinds.

"*Six.* Chemical substances for military purposes; appliances and machines used for shooting or spreading them.

"*Seven.* Articles of military clothing and equipment.

"*Eight.* Means of communication, signaling and military illumination and their component parts.

"*Nine.* Means of transportation and their component parts.

"*Ten.* Fuels and heating substances of all kinds, lubricating oils.

"*Eleven.* Gold, silver, means of payment, evidences of indebtedness.

"*Twelve.* Apparatus, tools, machines and materials for the manufacture or for the utilization of the articles and products named in numbers one to eleven.

"ARTICLE 2

"Article one of this law becomes article 22 paragraph one of the Prize Law Code.

"This law becomes effective on its promulgation."

The Government of the Reich on September 12, 1939, made an announcement relating to conditional contraband which read in part:

"The following is accordingly announced:

"The following articles and materials will be regarded as contraband (conditional contraband) subject to the conditions of article 24 of the Prize Law Code of August 28, 1939 (Reichsgesetzblatt part one page 1585):

"Foodstuffs (including live animals) beverages and tobacco and the like, fodder and clothing; articles and materials used for their preparation or manufacture.

"This announcement becomes effective on September 14, 1939."

(The Department of State Bulletin, September 23, 1939, Vol. I, No. 13, Publication 1380, p. 285.)

France:

"The Government of the French Republic makes known to interested parties, that, during the course of hostilities, it will consider as articles of contraband the following objects:

"Absolute Contraband

"(a) All sorts of arms, munitions, explosives, chemical products or apparatuses which may be utilized in chemical warfare, and machinery intended for their manufacture or repair; component parts of these articles, articles necessary or appropriate for their utilization; substances or ingredients employed in their manufacture; articles necessary or appropriate for the production or utilization of these substances or ingredients;

"(b) Combustibles of all sorts; all apparatuses or means permitting of the transportation on land, water or in the air, and all machinery utilized for their manufacture or repair; component parts of these articles; instruments, articles or animals necessary or appropriate for their employment, substances or ingredients untilized in their manufacture; articles necessary or appropriate for the production or employment of the said substances or ingredients;

"(c) All means of communication, tools, implements, instruments, equipment, geographic maps, pictures, papers and other articles, machinery or documents necessary or appropriate for the conduct of enemy operations, articles necessary or appropriate for their manufacture and their employment;

"(d) Coins, gold and silver ingots, bank notes, bonds, as well as metals, materials, specie, metal sheets, machinery or other articles necessary or appropriate for their manufacture.

"Conditional Contraband

"All sorts of foodstuffs, provisions, products for feeding animals, fodder, clothing, as well as objects and material utilized for their production."

(The Department of State Bulletin, November 18, 1939, Vol. I, No. 21, Publication 1405, p. 555.)

AMERICAN POSITION CONCERNING BRITISH "BLOCKADE"

Note of December 8, 1939:

"My Government has noted with regret that by its Order-in-Council of November 28, the British Government has undertaken to intercept all ships and all goods emanating from German ports, and ports in territory under German occupation, after December 4, 1939, and all ships from whatever port sailing after December 4 having on board goods of German origin or German ownership, and to require that such goods be discharged in a British or allied port and placed in the custody of the marshal of the prize court. This order if applied literally would subject American vessels to diversion to British ports if they are found to be carrying goods of German origin or German ownership, regardless of the place of lading of such goods or the place of destination and regardless of the ownership of the goods at the time that the vessel is intercepted, the words 'enemy origin', according to the order, covering any goods having an origin in any territory under enemy control, and the words 'enemy property' including goods belonging to any person in any such territory.

"Interference with neutral vessels on the high seas by belligerent powers must be justified upon some recognized belligerent right. It is conceded that a belligerent government has a right to visit and search neutral vessels on the high seas for the purpose of determining whether the vessel is carrying contraband of war to an opposing belligerent, is otherwise

engaged in some form of unneutral service, or has broken or is attempting to break an effective blockade of an enemy port and, if justified by the evidence, to take the vessel into port.

"American vessels are at the present time prohibited by our domestic law from engaging in any kind of commerce on the west coast of Europe between Bergen, Norway, on the north, and the northern part of Spain on the south. This prohibition applies to neutral as well as to belligerent ports within that area. Consequently, justification for interfering with American vessels or their cargoes on grounds of breach of blockade can hardly arise. Likewise the question of contraband does not arise with respect to goods en route from Germany to the United States.

"Whatever may be said for or against measures directed by one belligerent against another, they may not rightfully be carried to the point of enlarging the rights of a belligerent over neutral vessels and their cargoes, or of otherwise penalising neutral states or their nationals in connection with their legitimate activities.

"Quite apart from the principles of international law thus involved, the maintenance of the integrity of which cannot be too strongly emphasized at this time when a tendency toward disrespect for law in international relations is threatening the security of peace-loving nations, there are practical reasons which move my Government to take notice of the Order-in-Council here in question. In many instances orders for goods of German origin have been placed by American nationals for which they have made payment in whole or in part or have otherwise obligated themselves. In other instances the goods purchased or which might be purchased cannot readily, if at all, be duplicated in other markets. These nationals have relied upon such purchases or the right to purchase for the carrying on of their legitimate trade, industry and professions. In these circumstances, the British Government will readily appreciate why my Government cannot view with equanimity the measures contemplated by the Order-in-Council, which, if applied, cannot fail to add to the many inconveniences and damages to which innocent trade and commerce are already being subjected.

"My Government is, therefore, under the necessity of requesting that measures adopted by the British Government shall not cause interference with the legitimate trade of its nationals and of reserving meanwhile all its rights and the rights of its nationals whenever, and to the extent that they may be infringed."

(Department of State Bulletin, December 9, 1939, Vol. I, No. 24, Publication 1413, pp. 651–652.)

Aide Memoire, January 20, 1940:

"This Government feels constrained to express its serious concern at the treatment by the British authorities of American shipping in the Mediterranean area, and particularly at Gibraltar. It has already made clear its position as regards the legality of interference by the British Government with cargoes moving from one neutral country to another, in its Ambassador's Note number 1569 of November 20, 1939. In addition, it now regrets the necessity of being forced to observe not only that British interference, carried out under the theory of contraband control, has worked a wholly unwarrantable delay on American shipping to and from the Mediterranean area; but also that the effect of such action appears to have been discriminatory.

"Since ample time has elapsed to permit the setting up of an efficient system of control, it would seem that the present situation can no longer be ascribed to the confusion attendant on early organization difficulties.

"From information reaching this Government it appears that American vessels proceeding to neutral ports *en route* to or from ports of the United States have been detained at Gibraltar for periods varying from nine to eighteen days; that cargoes and mail have been removed from such ships; that official mail for American missions in Europe has been greatly delayed; that in some instances American vessels have been ordered to proceed, in violation of American law, to the belligerent port of Marseille to unload cargoes and there to experience further delays. It is further reported that cargoes on Italian vessels receive more favorable consideration that similar or equivalent cargoes carried by American ships, and that Italian vessels are permitted

to pass through the control with far less inconvenience and delay.

"There is attached a list of American vessels en route to neutral ports detained by the British Contraband Control during the period Nov. 15 to Dec. 15, from which it will be seen that the average delay imposed has amounted to approximately 12.4 days. From information in possession of this government, it is established that Italian vessels detained during the same period were held for an average delay of only 4 days.

"This government must expect that the British Government will at least take suitable and prompt measures to bring about an immediate correction of this situation. It will appreciate receiving advices that the situation has been corrected."

ENCLOSURE:

List of American vessels, as stated.

DEPARTMENT OF STATE,
Washington, Jan. 30, 1940.

American vessels reported to the Department of State to have been detained by the British Blockade Control in the Mediterranean for examination of papers and cargo, Nov. 15–Dec. 15, 1939:

S. S. Express—(Nov. 12–21), ten days. American Export Line—general cargo—detained by the British authorities at Malta. Held pending receipt of instructions from the British Government. Had remaining on board 420 tons of general cargo for Greece, Turkey and Rumania. Free to depart Nov. 21 in view of declaration furnished. Departed Nov. 23.

S. S. Nishmaha—(Nov. 11–23) thirteen days. Lykes Brothers Steamship Company—cotton, paraffin, beef casings—detained by the British authorities at Gibraltar. Large number of items of cargo seized. Free to depart after Nov. 17 on captain's undertaking to unload at Barcelona cargo for that port, and to proceed to Marseille for unloading seized items.

S. S. Examiner—(Nov. 17–Dec. 4) eighteen days. American Export Line—general cargo, oil, grease, rubber tires,

cotton goods—detained by the British authorities at Gibraltar. Eleven bags first-class mail removed.

S. S. Excambion—(Nov. 20–27) eight days, American Export Line—general cargo, oil, films—detained by British authorities at Gibraltar.

S. S. Exmouth—(Nov. 22–Dec. 5) fourteen days. American Export Line—general cargo—detained by British authorities at Gibraltar.

S. S. Extavia—(Nov. 29–Dec. 14) sixteen days. American Export Line—mixed cargo—detained by the British authorities at Gibraltar. Ship free to depart on giving Black Diamond guarantee in respect to one item of cargo.

S. S. Exochorda—(Dec. 5–13) nine days. American Export Line—mixed cargo, burlap, tinplate, tobacco, oil—detained by the British authorities at Gibraltar.

S. S. Exmoor—(Dec. 7–15) nine days. American Export Line—mixed cargo—detained by the British authorities at Gibraltar.

S. S. Explorer—(Dec. 9–23)—fifteen days. American Export Line—mixed cargo—detained by the British authorities at Gibraltar.

(Department of State Bulletin, January 27, 1940, Vol. II, No. 31, Publication 1428, pp. 93–94.)

THE "CITY OF FLINT"

On October 9th, 1939, the American merchant steamer *City of Flint* was visited and searched by a German cruiser at an estimated distance of 1,250 miles from New York. The *Flint,* carrying a mixed cargo destined for British ports, was seized by the German cruiser on grounds of contraband, and a German prize crew was placed on board. Between the 9th of October and the 4th of November 1939 the American ship was taken first to the Norwegian port of Tromsoe, then to the Russian city of Murmansk, and then after two days in the last-named port, back along the Norwegian coast as far as Haugesund where the Norwegian author-

ities on November 4th released the *Flint* on the grounds of the international law rules contained in articles XXI and XXII of Hague Convention XIII of 1907. Prizes may be taken to a neutral harbor only because of an "inability to navigate, bad conditions at sea, or lack of anchors or supplies." The entry of the *Flint* into Haugesund on November 3 was not justified by the existence of any one of these conditions. The original visit and search and seizure of the *Flint* by the German warship, the placing of the prize crew on board, and the conduct of that crew were apparently all in accord with law. The stay in the harbor of Murmansk, however, was of doubtful legality. No genuine distress or valid reason for refuge in a so-called neutral harbor is evident from the examination of the facts. Perhaps the Germans and the Russians hoped to invoke the provisions of Article XXIII of Hague Convention XIII which authorizes a neutral power to permit "prizes to enter its ports and roadsteads * * * when they are brought there to be sequestrated pending the decision of a prize court." This article has never been accepted generally as a part of international law and was specifically rejected by the United States in ratifying the convention. The situation was complicated by the equivocal position of Soviet Russia which was not a neutral in the traditional sense, in the European war. Under strict rules of international law the U. S. S. R. was derelict in regard to its neutral duties and should not have permitted the *Flint* either to enter Murmansk or to find any sort of a haven there.

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NORWEGIAN STATEMENT ON THE "CITY OF FLINT"

The Foreign Office finds it correct to give the complete account of how the German prize, *City of Flint*, has been handled by Norwegian authorities.

The *City of Flint* is an American vessel which, with a German prize crew aboard, came for the first time to Tromsoe on Oct. 20 and asked for fuel and water. Permission was given in accordance with Norwegian neutrality rules of 1928 based upon the international agreements about neutrality duties in maritime warfare of Oct. 18, 1907 (The Hague agreement Number 13).

The *Flint*, however, was orderd to remain some hours longer than necessary for taking on fuel and water. Thus it emerged that it had British citizens aboard. Crews had been taken off one or more vessels which German warships sank and these British citizens, according to a request from the prize ship, were put ashore at Tromsoe.

The *City of Flint* left Tromsoe on Oct. 21 and, because the stay there had been prolonged according to the Norwegian order, the ship obtained permission to continue to sail within Norwegian territories for twenty-four hours reckoned on the time of departure from Tromsoe.

This was in accord with Norwegian neutrality rules.

On the following day, which was Sunday, the German Chargé d'Affaires at Oslo said his government found it incorrect that the stay within Norwegian territorial waters be limited this way and asked that the ship be allowed to continue within Norwegian territorial waters.

The Foreign Office answered on Oct. 25 by citing the neutrality rules. The German chargé d'affaires then came back with new overtures on the following Sunday, Oct. 29.

The German Government maintained the Norwegian Government had supposed incorrectly that the prize should be treated in the same way as a warship and the German Government was of the opinion that, according to The Hague agreement of 1907, the prize could remain in transit in Norwegian territorial waters without a time limit.

The Norwegian Foreign Minister answered the next day that as far as the question about transit of prizes and war-

ships, they were placed under the same footing in The Hague agreement, but in this case there had not been a question about transit but about a stay in a neutral port and about the leaving of the port.

On the question about the transit in neutral waters, the Foreign Minister declared himself in agreement with the German Government.

This last question became effective that same day.

Two hours before the Foreign Minister saw the German chargé d'affaires, the *City of Flint* had anew entered the harbor of Tromsoe, following the waters from the north from Murmansk. This time the vessel did not stop but only asked permission to continue south. There were no hindrances and the vessel continued southward in Norwegian waters.

When this became known, the possibility arose that another warfaring power would try to stop the ship on its way. To control the boat as long as it was in Norwegian territory and to safeguard Norway's neutrality, the Norwegian admiral in command ordered a Norwegian naval ship to accompany the *City of Flint* southward.

Farther south, the boat was met by the *Olav Trygvasson*, which took over the watch.

Outside of Sogn (a fiord north of Bergen), the chief of the *City of Flint* reported a sick man aboard and said that he should be permitted to stop at Haugesund to get the man under medical treatment.

A doctor was sent aboard from the *Olav Trygvasson* and when he had seen the sick man had only an insignificant wound in the leg, the chief of the *City of Flint* was informed he could not for this reason be permitted to anchor at Haugesund. The prize chief agreed.

The *City of Flint*, despite this, anchored at Haugesund on Nov. 3 in the evening and when the captain of the *Olav Trygvasson* went aboard and asked why he put at anchor, the prize chief answered "according to orders from my government." Later he said he wanted to confer with the German Consul at Haugesund.

The Hague Agreement of 1907, which had been ratified by both the German and Norwegian Governments and which

had been referred to expressly by the German Government in connection with the *City of Flint's* stay at Tromsoe, states in Article XXI that prizes can be taken to a neutral harbor owing "only to the inability to navigate, bad conditions at sea, or lack of anchors or supplies."

None of these conditions was present.

If none of the conditions is present, Article XXII says "the neutral power must give free the prize which has been brought into harbor."

In accordance with this, the *City of Flint* during the night was taken out of the prize commander's power and was given free while the prize crew was interned temporarily on the *Olav Trygvasson.*

Early next morning, the *City of Flint* left Haugesund On that same morning, Nov. 4, the German chargé d'affaires at Oslo delivered to the Norwegian Foreign Minister a protest against the way in which Norwegian authorities had acted in connection with the *City of Flint.*

The Norwegian Foreign Minister on the spot showed the protest was without reason and that Norwegian authorities acted exactly in accordance with The Hague agreement rules. The German Minister demanded the *City of Flint* be held back as long as the case was discussed between the two governments, but the Norwegian Government found no legal base on which to take such steps against the American boat.

The whole action in this matter has been explained by the Norwegian Government in a note which today has been delivered to the German chargé d'affaires.

(New York Times, November 6, 1939.)

TREATMENT OF THE UNITED STATES MAILS

As in the war of 1914–18, an exchange of notes took place during the Winter of 1939–40 between the Governments of the United States and Great Britain on the subject of seizure and censorship of the mails. The American Government admitted that the British had a right to censor private mails which normally passed through British ports or territory, but denied the right of Great Britain to

interfere with American mails on neutral ships on the high seas or on ships which entered British ports involuntarily. The United States Government based its case, just as it did 23 years before, on Hague Convention XI, which specified that postal correspondence is inviolable on the high seas. During the war of 1914–18 the American Government had agreed that only "genuine" correspondence was immune from search and had conceded that where mail was used as a cover for the shipment of contraband articles it was no longer "genuine" and so no longer inviolable. This left open the question: How was the belligerent (Great Britain) to decide or to find out whether the mail was truly "genuine" or not? The practical answer was that *all* was subject to opening because, in effect, the belligerent *had* to open all mail in order to find out whether it *ought* to have opened the mail! The position of the American Government was thus not a particularly strong one when it came to protesting mail censorship during the war which began in September 1939. The British in their reply were quick to point out that the United States in 1916 had already "admitted in principle the right of the British authorities to examine mail bags with the view to ascertaining whether they contained contraband." The strong wording of the Hague Convention has thus been emasculated in practice and all correspondence, in fact, seems to be subject to belligerent interference.

American note, January 2, 1940:

"The United States Department of State has been advised that British authorities have removed from British ships and from American and other neutral ships American mails ad-

dressed to neutral countries and have opened and censored sealed letter mail sent from this country.

"The following cases among others have come to the Department of State's attention: On October 10 the British authorities took from the steamship *Black Gull* 293 sacks of American mail addressed to Rotterdam and ten sacks addressed to Antwerp. On October 12 authorities in the Downs removed from the *Zaandam* 77 sacks of parcel post, 33 sacks of registered mail, and 156 sacks of ordinary mail addressed to the Netherlands, as well as 65 sacks of ordinary mail addressed to Belgium, four to Luxemburg, three to Danzig and 259 to Germany. On October 12 authorities at Weymouth removed from the *Black Tern* 94 sacks of American mail addressed to Rotterdam, 81 to Antwerp and 184 to Germany. On October 24 authorities at Kirkwall removed from the *Astrid-Thorden* 468 bags mail from New York to Gothenburg and 18 bags from New York to Helsinki. Many individual instances of British censorship of American mails have come to the Department's attention.

"This Government readily admits the right of the British Government to censor private mails originating in or destined to the United Kingdom or private mails which normally pass *through* the United Kingdom for transmission to their final destination. It cannot admit the right of the British authorities to interfere with American mails on American or other neutral ships on the high seas nor can it admit the right of the British Government to censor mail on ships which have involuntarily entered British ports.

"The eleventh Hague Convention recognizes that postal correspondence of neutrals or belligerents is inviolable on the high seas. The United States Government believes also that the same rule obtains regarding such correspondence on ships which have been required by British authorities to put into a British port. This view is substantiated by Article 1 of the Convention which stipulates: 'If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.' The United States Government regards as particularly objectionable the practice of taking mails from vessels which ply directly between American and neutral European ports and which through some form of duress are

induced to call at designated British control bases. This is believed to be a clear violation of the immunity provided by the Hague Convention.

"The United States Government feels compelled to make a vigorous protest against the practices outlined above and to express the hope that it will receive early assurances that they are being discontinued."

(The Department of State Bulletin, January 6, 1940, Vol. II, No. 28, Publication 1422, p. 3.)

British reply, January 17, 1940:

"ONE. I have the honour to invite reference to your note No. 1730 of the 27th December in which you drew attention to certain specific instances of the removal from British, United States and other neutral ships, and of the examination by the British censorship authorities, of United States mail addressed to neutral countries and of sealed letter mail despatched from the United States. You also stated that your Government admitted the right of His Majesty's Government to censor private mails originating in or destined for the United Kingdom or private mails which normally pass through the United Kingdom for transmission to their final destination, but that in view of The Hague Convention No. 11, your Government could not admit the right of the British authorities to interfere with United States mail in United States or other neutral ships on the high seas or to censor mail in ships which have involuntarily entered British ports.

"TWO. His Majesty's Government in the United Kingdom are happy to note that there is substantial agreement between them and the United States Government as regards the rights of censorship of terminal mails and that the only point of difference seems to lie in the interpretation of The Hague Convention in regard to correspondence in ships which are diverted into British ports.

"THREE. The view of His Majesty's Government as regards the examination of mail in ships on the high seas or involuntarily entering British ports is that the immunity conferred by Article I of The Hague Convention No. 11, which in any case does not cover postal parcels, is enjoyed

only by genuine postal correspondence, and that a belligerent is therefore at liberty to examine mail bags and, if necessary, their contents in order to assure himself that they constitute such correspondence and not articles of a noxious character such as contraband. This view must, in the opinion of His Majesty's Government, be regarded as established by the practice during the war of 1914–1918, when none of the belligerents accepted the view that Article I of this convention constituted an absolute prohibition of interference with mail bags, and the general right to search for contraband was regarded as covering a full examination of mails for this purpose. Reference to the correspondence between the United States Government and His Majesty's Government in 1916 shows that at that date the United States admitted in principle the right of the British authorities to examine mail bags with a view to ascertaining whether they contained contraband.

"FOUR. It will be appreciated that the letter post as well as the parcel post can be used to convey contraband; and that even though letters may be addressed to a neutral country their ultimate destination may be Germany. For instance, the letter mails may be used to convey securities, cheques or notes or again they may be used to send industrial diamonds and other light contraband. It must be remembered that the limit of size, weight and bulk of letters sent is sufficient to allow the passage of contraband of this nature which may be of the utmost value to the enemy.

"It was presumably for this reason that the United States Government in their note of the 24th May, 1916, stated that "The Government of the United States is inclined to the opinion that the class of mail matter which includes stocks, bonds, coupons and similar securities is to be regarded as of the same nature as merchandise or other articles of property and subject to the same exercise of belligerent rights. Money orders, cheques, drafts, notes and other negotiable instruments which may pass as the equivalent of money are, it is considered, also to be classed as merchandise."

"It is clear that in the case of merchandise His Majesty's Government are entitled to ascertain if it is contraband intended for the enemy or whether it possesses an innocent character, and it is impossible to decide whether a sealed letter does or does not contain such merchandise without opening it and ascertaining what the contents are. It would be difficult to prevent the use of the letter post for the transmission of contraband to Germany, a use which has been made on an extensive scale, without submitting such mail to that very examination to which the United States Government is taking objection.

"FIVE. The Allied governments in their correspondence with the United States Government in 1916 also had occasion to demonstrate the extent to which the mails were being employed for the purpose of conveying contraband articles to Germany. The position in this respect is identical today, and, in this connection, I have the honor to invite reference to an aide memoire dated the 23d November, 1939, which was communicated to a member of your staff and in which clear evidence was given of the existence of an organized traffic in contraband on a considerable scale between German sympathizers in the United States and Germany through the mail.

"An article in a newspaper published in German in the United States, which was handed to him at the same time, showed that an organization existed in United States territory for the purpose of facilitating this traffic.

"SIX. Quite apart from transmission of contraband the possibility must be taken into account of the use of the letter post by Germans to transmit military intelligence, to promote sabotage and to carry on other hostile acts. It is in accordance with international law for belligerents to prevent intelligence reaching the enemy which might assist them in hostile operations.

"SEVEN. I may add that in another respect, namely, the destruction of mails on board ships sunk by the illegal methods of warfare adopted by Germany, the situation today is identical with that which existed in the war of 1914–1918. Between the 3d September, 1939, and the 9th January, 1940, the German naval authorities have destroyed, without pre-

vious warning or visit, in defiance of the rules of war and of obligations freely entered into, the S. S. Yorkshire, the S. S. Dunbar Castle, the S. S. Simon Bolivar and the S. S. Terukuni Maru, all of which are known to have been carrying mails to or from neutral countries, with as little regard for the safety of the neutral correspondence on board as for the lives of the inoffensive passengers and crew. Yet His Majesty's Government are not aware that any protest regarding this destruction of postal correspondence has been made to the German Government.

"EIGHT. In contrast to this reckless and indiscriminate destruction of neutral property, the examination conducted by His Majesty's Government of the mails which are under discussion does not involve innocent mail being either confiscated or destroyed. In accordance with the terms of The Hague Convention, mail found in ships which have been diverted to British ports is forwarded to its destination as soon as possible after its innocent nature is established. In no case is genuine correspondence from the United States seized or confiscated by His Majesty's Government.

"NINE. For the above reasons His Majesty's Government find themselves unable to share the views of the United States Government that their action in examining neutral mail in British or neutral shipping is contrary to their obligations under international law. They are, however, desirous of conducting this examination with as little inconvenience as possible to foreign nations, and you may rest assured that every effort has been and will be made to reduce any delays which may be occasioned by its enforcement.

"If the United States Government have occasion to bring any specific complaints to the notice of His Majesty's Government concerning delays alleged to be due to the examination of these mails, His Majesty's Government will be happy to examine these complaints in as accommodating and friendly a spirit as possible. While the task of examination is rendered heavy as a result, it is believed that arrangements which have been made to deal with this correspondence will insure that all genuine correspondence will reach its destination in safety and with reasonable dispatch."

(The Department of State Bulletin, January 27, 1940, Vol. II, No. 31, Publication 1428, pp. 91–93.)

CAPTURE, ESCORT, AND CONTROL BY WARSHIP AND AIRPLANE

In Situation I the Cruiser *Bax* of State B did not place a prize crew on board the *Elrod*; instead an airplane was sent out by the *Bax* "periodically" to make certain that the *Elrod* did not deviate. The issue is not one of deviation *before* visit and search, a problem which was extensively considered by the Commission of Jurists in 1923 and in Naval War College International Law Situations in 1930 and 1938. Rather, the question is one of deviation *after* capture. Under international law the commander of a belligerent cruiser which has captured an enemy merchantman or seized a neutral vessel has the option of placing a prize crew on board or of escorting the ship into port. What is crucial in such a situation is that the captured or seized vessel be under the effective control of the belligerent. A mere order to proceed to a specified destination need not be obeyed by the captured or seized craft which is legally free to sail where it wishes if the control over it is no longer maintained. The captured ship has no right to attempt to escape or deviate, but if control ceases the merchant ship is at liberty. The belligerent cruiser, acting as escort, or the prize crew, must operate in such a way as to convince the captain of the seized ship that he is under actual constraint. The question is both one of fact and of thought as to the fact. Objectively the case might be one in which the belligerent captor did not have the physical force to maintain his authority but if he performed in such a way as to create a reasonable belief in the minds of those on board the captured

vessel that such authority could be maintained, then legally the belligerent would be in control. There is the famous story about the British steamer *Appam* which was captured in 1916 by the German cruiser *Moewe*. The Germans could not spare many men for a prize crew, and to bolster their authority they told the British that they had mined the *Appam* and could blow it to bits at the slightest sign of insubordination. Whether the *Appam* was really mined or not, and whether the English crew really would have had the power to retake command, does not change the fact that by their actions and tactics the Germans gave convincing evidence of control.

In each case of capture and seizure examination has to be made into this question of control. Catagorical assertions as to the size of the prize crew or as to the distance between the escort and the escorted are impossible and useless. Instead, the law must employ a rule of reason, and a judicial authority would have to decide whether in a given instance adequate effort had been made by the captor to convince the captured that he was in control. If sufficient authority had been made manifest to make plain to any sensible, rational person that he could not proceed freely, then legally control could be said to exist. In the case at hand, the *Bax* sends out the airplane periodically. This might seem at first as if control existed only when the airplane was actually within the sight of those on board the *Elrod*. It might be argued by some that either the *Bax* or the airplane must be physically present every moment in order to maintain its authority, and it is true that on the face of it, a dangerous precedent might be set if such periodic visits were

too readily condoned. The rules require the belligerent to make some effort in return for compliance on the part of the seized or captured ship; the law is a sensible compromise between the belligerent's natural desire to capture a ship and to go on his way after merely issuing an order, and the merchantman's wish to break away and resume his normal course after capture. If the law in regard to control is too greatly relaxed, grave dangers may be foreseen; belligerents could capture, give orders, sail after other ships and then attempt to penalize the vessels which it had not bothered to escort and which it might have reencountered. Undue advantage would thus accrue to belligerent warships.

In the case of the *Elrod,* however, it is not absolutely certain that the *Bax* by means of its airplane is not in control. The airplane may be looked upon as an extension of the guns of the *Bax* and in these days of radio, a warship out of sight over the horizon might escort and keep control for a time over a merchantman which would be within the range of the warship's guns and would have reason to believe that it was not "free." If the airplane appeared sufficiently often, or if the warship made it clear that it was keeping watch in effective fashion, there would be no release from control. The point at issue is whether, under the circumstances, the airplane was around *enough* to convince the *Elrod* captain that he was being watched and controlled. How much is "enough"? How often is "sufficiently"? These are questions which the commander of a warship or the judge of the prize court must answer and must decide in terms of what is reasonable in the particular

situation. Therefore, though the action of the *Bax* is open to grave criticism, and though it may look like an unwarranted attempt to prevent deviation by means of ineffective control, it must be admitted that the use of radio and airplane demands a greater flexibility in the application of the old rules which required the actual physical presence of an accompanying warship. The action of the *Bax* is not necessarily illegal, and careful scrutiny of all the facts might reveal that there was sufficient evidence of control to make the *Elrod's* captain believe that the physical might of the plane or warship could be exerted at any moment.

RÉSUMÉ

It is plain that the rules of international law are being profoundly affected by the social and technical developments of the present epoch. Collectivistic tendencies are forcing a reexamination of the fundamental postulates of neutrality, and it seems inevitable that adjustments must be made to permit the continuation of commerce between belligerents and neutrals despite the advance of governments into the terrain formerly occupied by private enterprise alone. Likewise in matters pertaining to contraband, the maintenance of blockades and the exercise of control over captured vessels, the introduction of the airplane, of the radio, and of other devices in this new power age, raise new problems in regard to the application of the old rules. This is not to assert that changing conditions or new methods of warfare justify the abandonment of former legal restraints. It does mean, however, that international law, like domestic law,

must keep in touch with its social, economic, and political environment. Law stands for order but it must also allow for change, and the task of adapting rules to shifting conditions is a never-ending one.

SOLUTION

(*a*) State C should cancel or refuse to have the agreement made, though it should have the opportunity to prove that the transaction was purely commercial and nonpolitical in character. The evidence in this case however does not seem to support any such contention on the part of State C.

(*b*) Visit and search of the *Cora* by the *Byron* was legal.

(*c*) The *Elrod* is not guilty of unneutral service. It is not impossible that the *Elrod* was legally under the control of the *Bax*. The question hinges upon this point: Was the airplane sufficiently in evidence to convince the captain of the *Elrod* that he was watched and under control?

Situation II

NEUTRALITY PROBLEMS: DISTRESS, SUBMARINES, AND QUALIFIED NEUTRALITY

States U and W are at war. The United States is neutral and the President has invoked the Joint Resolution of May 1, 1937, including section 8. State W is a Latin-American Republic.

(*a*) A commercial submarine of State U, pursued by a destroyer of State W and damaged by the destroyer's gunfire, arrives off an American port and seeks entry, claiming that it is unarmed and in distress.

(*b*) An armed merchant vessel of State W, sailing from an American port, is torpedoed and sunk 2½ miles off the American coast by a submarine of State U which did not come to the surface before attacking. Three American citizens on board are drowned. In response to the American Government's protest over the sinking, State U replies that the United States cannot claim the protection of the customary laws because of its unneutral conduct.

(*c*) States A, B, C, D, and E apply economic sanctions against State W. The latter asks the United States to apply the joint resolution of May 1, 1937, to these States on the basis of section 1b of the joint resolution.

What should be the legal position of the United States in each of the above cases?

SOLUTION

(*a*) The submarine should be admitted. Whether, after entry it should be interned or allowed to make repairs and depart depends upon whether all submarines are to be classed as warships or whether the American Government continues to recognize that some submarines can possess a genuinely commercial character.

(*b*) The action of the submarine of State U is illegal, constitutes a violation of American neutrality, and should be protested by the United States. Despite its unneutral conduct in regard to Latin America, United States is still a neutral and entitled to neutral rights, though its position is somewhat weakened by the application of section 8 of the law of 1937.

(*c*) The application of the provisions of the law of 1937 to States applying economic sanctions is a matter of executive discretion and not one of legal obligation.

VESSELS IN DISTRESS

Both domestic and international law make exceptions for force majeure. Whatever the rules or prohibitions may be, ships in distress are given asylum and are exempted from the usual requirements as to entry or from any special bans or prohibitions. As was said in the Harvard Draft Code on Territorial Waters, American Journal of International Law, Supplement 1929, pp. 299–300:

> An exemption clearly ought to be made where the vessel enters territorial waters in distress or because of force majeure or where a vessel having entered the marginal sea for purposes of innocent passage, the passage is there broken

because of distress or force majeure. In such cases, the vessel should be immune from all penalties which might otherwise have been incurred by reason of its presence in territorial waters. Such penalties would include all penal forfeitures, confiscations, and criminal liabilities which the littoral state might impose on the vessel, its cargo, or the persons on board.

Nevertheless, a vessel entering territorial waters in distress may not wholly ignore the local jurisdiction. For example, if the ship has required salvage assistance, the salvor may sue for his compensation. Also, if the vessel or those on board commit an offense against the local law subsequent to the entry in distress, the littoral state's power to punish is undiminished.

It is customary to throw upon the vessel the burden of proving actual distress or force majeure. It seems reasonable also to assert that if a vessel is hovering just outside the marginal sea for the purpose of smuggling, the plea of distress will not be recognized if she is subsequently forced within the three-miles limit by stress of weather, shortage of water or provisions, or the like.

"Distress" may include injury to hull or machinery or shortage of provisions of fuel. But in the latter cases it must be shown that the shortage was not due to improvidence in supplying the vessel before her voyage began. "Force majeure" may include the action of pirates or mutineers. In such cases the pirates or mutineers should be subject to prosecution since in this instance it is the ship and cargo only and not the persons in charge whose entry into territorial waters is due to compulsion.

In regard to warships it is clear that in time of war as well as in peace such vessels have a right of entry if in distress. During the war of 1914–18, the Netherlands, which excluded all belligerent warships, made an exception in favor of vessels in want or in danger from weather or sea conditions. Insofar as permission *to enter* is concerned, international law does not distinguish between the

causes of the distress. Vessels damaged by enemy gunfire or pursued by enemy craft are granted asylum in a fashion no different from warships driven in by stress of weather. Once admitted in distress, a belligerent warship is subject to varying treatment depending upon the causes of the distress. What should be done *after* admission is therefore a separate problem from that of the original entry. Force majeure gives *a right of entry only* but no necessary right to repair the damage, to replenish supplies, to depart freely, or to be immune from internment. The distress must be genuine:

"Where the party justifies the act upon the plea of distress it must not be a distress which he has created himself . . ." (Hyde, International Law, Vol. I, p. 400, note.)

The subject of asylum in neutral ports was carefully considered in Naval War College Situations, 1935, pp. 42–53, and is also treated at length in the Harvard Draft Code "Rights and Duties of Neutral States in Naval and Aerial War," American Journal of International Law, Supplement, July 1939, pp. 425–432, and pp. 462–477.

REPAIR OF DAMAGE CAUSED BY ENEMY FIRE

Though for a long time international law did not distinguish in matters of repair between damage caused by enemy fire and injury due to a different origin and, in the words of article 17 of Hague Convention XIII of 1907, merely said that "belligerent warships may only carry out such repairs as are absolutely necessary to render them seaworthy and may not add in any manner whatsoever to their fighting force," in later years a clear

distinction has been made between the sources of damage. In the Havana Convention on Maritime Neutrality of 1928 (Hudson, "International Legislation," Vol. IV, p. 2402) article 9 reads:

> Damages which are found to be produced by the enemy's fire shall in no case be repaired.

One also finds in the Scandinavian rules regarding neutrality (American Journal of International Law, October 1938, Official Documents, p. 144) the following article from the Danish regulations. Similar statements exist in the rules as put forth by Finland, Iceland, Norway, and Sweden:

> In Danish ports or anchorages, belligerent warships may repair damages only to the extent indispensable to the safety of their navigation, and they may not increase in any manner their military force. Damaged ships may procure no aid on Danish territory for the repairing of damages manifestly caused by acts of war of the adversary. The competent Danish authorities shall determine the nature of the repairs to be made.

In the Harvard Draft Code on Neutrality, op. cit., article 34 states:

> A neutral State which admits a belligerent warship in distress shall permit such warship to remain only for the time necessary for remedying the condition of distress under which it entered; but a condition of distress which is the result of enemy action may not be remedied and if the vessel is unable to leave, it shall be interned.

The proclamation of the President of the United States, September 5, 1939, expressly forbade repairs of damage inflicted by the enemy:

> No ship of war of a belligerent shall be permitted, while in any port, harbor, roadstead, or waters subject to the jurisdiction of the United States, to make repairs beyond those that are essential to render the vessel seaworthy and which

in no degree constitute an increase in her military strength. Repairs shall be made without delay. Damages which are found to have been produced by the enemy's fire shall in no case be repaired.

(4 Federal Register, p. 3809.)

NEUTRAL REGULATIONS IN REGARD TO SUBMARINES

Though customarily neutral powers have admitted belligerent warships into their ports, subject of course to the regulations concerning length of stay, repairs, and supplies, the naval vessels of States at war have no absolute right to enter neutral harbors. Neutral States may, if they wish, do as The Netherlands did in the last war and exclude all belligerent warcraft entirely. The neutral is under no duty to forbid entry into its territorial waters or roadsteads, but it has the right to apply such a ban if it chooses.

The practice of states indicates that warships are usually admitted to neutral waters under conditions fixed by the neutral state, but the evidence does not indicate that admission is allowed as a matter of legal duty, though there were many treaties in the 18th century which provided that public armed vessels might enjoy the hospitality of neutral ports. Total exclusion, however, was the rule applied in certain instances which were not cases of reprisal . . . (Harvard Draft Code, op. cit., page 426.)

There is no obligation upon neutral states to admit warships belonging to belligerent states, but it is not in general refused. (Commission of Jurists, General Report, 1923, British Parliamentary Papers, Cmd. 2201, p. 38.)

Special regulations have been issued by many powers in regard to submarines. This type of ship has been singled out for individual attention due to the fact that the operations of submarine craft

are more difficult to control than those of surface vessels and are more likely to involve a neutral power in difficult and embarrassing complications. In the World War, for example, Spain issued a decree which forbade all submarine vessels of any kind whatsoever belonging to belligerent powers to navigate in Spanish waters. Norway and Sweden also issued orders strictly limiting the right of submarines to enter their jurisdiction. After the war other States such as Belgium, Venezuela, the United States, and Yugoslavia drafted regulations dealing with submarines, and the Harvard Draft Code, op. cit., pages 432–435, contains a special article declaring that:

> A neutral state may exclude belligerent submarine vessels from its territory, or admit such vessels on condition that they conform to such regulations as may be prescribed.

PROVISIONS OF THE AMERICAN NEUTRALITY ACT OF 1939

Section 11. Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign state will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, and shall make proclamation thereof, it shall thereafter be unlawful for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. Whenever, in his judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provision of this section shall thereupon cease to apply, except as to offenses committed prior to such revocation.

PROCLAMATION OF THE PRESIDENT, NOVEMBER 4, 1939

WHEREAS section 11 of the Joint Resolution approved November 4, 1939, provides:

"Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign state, will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, and shall make proclamation thereof, it shall thereafter be unlawful for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. Whenever, in his judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply, except as to offenses committed prior to such revocation."

WHEREAS there exists a state of war between Germany and France; Poland; and the United Kingdom, India, Australia, Canada, New Zealand, and the Union of South Africa:

WHEREAS the United States of America is neutral in such war;

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority vested in me by the foregoing provision of section 11 of the Joint Resolution approved November 4, 1939, do by this proclamation find that special restrictions placed on the use of the ports and territorial waters of the United States, exclusive of the Canal Zone, by the submarines of a foreign belligerent state, both commercial submarines and submarines which are ships of war, will serve to maintain peace between the United States and foreign states, to protect the commercial interests of the United States and its citizens, and to promote the security of the United States;

And I do further declare and proclaim that it shall hereafter be unlawful for any submarine of France; Germany; Poland; or the United Kingdom, India, Australia, Canada, New Zealand, or the Union of South Africa, to enter ports or territorial waters of the United States, exclusive of the Canal Zone, except submarines of the said belligerent states which are forced into such ports or territorial waters of the United States by *force majeure;* and in such cases of *force majeure*, only when such submarines enter ports or territorial waters of the United States while running on the surface with conning tower and superstructure above water and flying the flags of the foreign belligerent states of which they are vessels. Such submarines may depart from ports or territorial waters of the United States only while running on the surface with conning tower and superstructure above water and flying the flags of the foreign belligerent states of which they are vessels.

And I hereby do enjoin upon all officers of the United States charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution, and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

And I do hereby revoke my Proclamation No. 2371 issued by me on October 18, 1939, in regard to the use of ports or territorial waters of the United States by submarines of foreign belligerent states.

This proclamation shall continue in full force and effect unless and until modified, revoked or otherwise terminated, pursuant to law.

In witness whereof, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

Done at the city of Washington this fourth day of November, in the year of our Lord nineteen hundred and thirty-nine and of the Independence of the United States of America the one hundred and sixty-fourth, at 12.04 p. m.

[seal]

Franklin D. Roosevelt

By the President:

Cordell Hull

Secretary of State.

(4 Fed. Reg., p. 4494.)

COMMERCIAL SUBMARINES

During the World War of 1914–18 there was a difference of opinion between the American and British Governments on the subject of commercial submarines. It was the American contention that a submarine could be a bona fide merchant vessel, a view which it upheld in regard to the German submarine *Deutschland* which arrived in Baltimore July 9, 1916, with a cargo of dyestuffs. Great Britain contended that the *Deutschland* should be treated as a warship, claiming that it was not likely that submarines could be employed in anything but a hostile capacity. The United States Government did not alter its stand, however, and because of the reference to commercial submarines in the President's proclamation of November 4, 1939, it is apparent that this country still considers it perfectly possible for a submarine to operate as a genuinely commercial ship. The American and British exchange of 1916 is thoroughly considered in Naval War College, International Law Situations, 1931, pp. 73–78.

APPLICATION TO THE PRESENT SITUATION

The submarine of State U should be granted entry into the American port. The rule as to asylum governs this case and the distress seems genuine. If the American Government is convinced that the submarine is really unarmed and is a commercial craft, and if, as seems likely, it adheres to the view expressed in the replies to Great Britain in 1916, then the vessel should be treated like any surface merchant craft. It can remain indefinitely in American waters and may obtain full

repairs and supplies. If the submarine, however, is looked upon as a warship, then it could remain in port but 24 hours. Because it arrived in distress, it is exempt from the prohibition against entry but it is not free to stay to make repairs of damage caused by enemy gunfire. Classed as a war vessel, the submarine must either depart within the stipulated period or else be interned.

AMERICAN NEUTRALITY AND LATIN AMERICA

In both of the American so-called neutrality laws of 1937 and 1939 there were provisions relating to Latin America and exempting those republics from the application of the statutes, provided such republics were not cooperating with any non-American states in any war. In the 1937 law section 4 dealt with the American Republics, and virtually the same stipulations were contained in section 9 of the 1939 enactment. This section reads as follows:

> This joint resolution (except section 12) shall not apply to any American republic engaged in war against a non-American state or states, provided the American republic is not cooperating with a non-American state or states in such war.

Maintenance of the Monroe Doctrine is what Congress obviously had in mind in framing this part of the legislation. Application of this section in any war between a Latin-American republic and a non-American power would clearly involve the United States in unneutral conduct. This country would not be impartial but would be applying restrictions on loans, shipment of goods, travel on belligerent vessels, etc., against one of the parties (the non-American state) and not against the

Latin-American belligerent. In general there was very little debate in Congress, however, on this part of the law. One of the few Congressmen to comment on this section and to point out some of the dangers was Representative McReynolds who declared:

"With this mandatory provision, suppose a foreign country should attack Mexico or Canada or should attack any of the South American countries. You could not ship any of those countries arms. Your President would have no discretion. The bill makes no exception. Then where is your Monroe Doctrine?"

(Congressional Record, Vol. 79, p. 14370.)

Also at the time of the discussion about the 1937 law, Assistant Secretary of State Moore declared in the Senate committee hearings:

"The threat of an attack would be known before there was an actual one. The nation that might make it is a good many thousand miles away. It would be known in time for Congress to act and to remove the restrictions so far as the country to the south of us was in danger. * * * So, practically, it does not seem to be desirable, certainly not necessary, to put any such exception in the law."

(Hearings, No. 3, p. 43.)

Not much else was said, however, in either branch of Congress, and a section calling for unneutrality thus slipped into a so-called neutrality statute, with a minimum of discussion.

ARMED MERCHANT VESSELS

The problem of armed merchantmen has been discussed many times in Naval War College situations, notably in 1927, and has been thoroughly analyzed by Borchard and Lage in "Neutrality for the United States," part II, Chapter II. During

the World War of 1914–17 the American Government insisted upon the right of American citizens to travel upon belligerent armed merchant ships, and permitted such vessels to enter our ports. In its controversy with Germany over submarine warfare, the United States also insisted that belligerent merchant ships, armed or unarmed, were entitled to warning before being sunk. Though Secretary of State Lansing in 1916 attempted to change the American stand, the British contention that their ships were armed for "defensive" purposes was accepted by the United States. It is true that American citizens had a right to take passage on belligerent armed vessels but they did so at their own risk, and the effort of the United States to obtain a promise from Germany to have its submarines come to the surface and give warning, at the same time that it was condoning the British practice of arming for defense, was neither very successful nor very logical. During the war of 1939–40 the same problem has not recurred. Under the neutrality laws, American citizens are forbidden to travel on belligerent ships and the arming of American merchant vessels has been prohibited. The President, further, under section 11 has the authority to forbid the entry of foreign armed merchantmen. By domestic statute, therefore, the United States is better equipped than before to meet the armed merchantmen problem, but the fact remains that under *international* law American citizens may still travel on belligerent armed merchant ships.

QUALIFIED NEUTRALITY

Nations which assume an equivocal attitude toward a war and which are not completely neutral in all respects, may be said to be in a state of qualified neutrality. Previous examples of this dubious status may be found in Naval War College, International Law Situations, 1917, and the action of Brazil which revoked its neutrality law on June 4, 1917, without making a declaration of war is to be noted especially. Qualified neutrality has put in its appearance in the European war of 1939–40. Italy officially adopted a position of "nonbelligerency" instead of neutrality (See Italian note to Great Britain, March 4, 1940, New York Times, March 5, 1940), and in January 1940 the Turkish Foreign Minister declared, "We are not neutral; we are simply not in the war" (New York Times January 27, 1940). In the past, neutrality has derived its vitality from a feeling of genuine indifference on the part of third states to the outcome of the conflict. Contrary to the assertions made by some collective-security enthusiasts to the effect that neutrality is the negation of community feeling, neutrality is possible only when there is sufficient community of interest between the belligerents and between the belligerents and the neutrals to cause the latter not to care too greatly which side wins. Neutrality therefore depends upon the existence of enough community to make the outcome of a war not a matter of alarming concern to the way of life of nonparticipating States. Where the community schism runs deep, neutrality becomes more and more difficult to maintain.

Failure of a neutral to discharge its obligations in all respects, does not necessarily mean that it is deprived of all neutral rights or has assumed a position of complete partiality. Any sort of unneutral conduct does open the way for reprisals by the injured belligerent party. In the present case, the United States is not completely neutral between States U and W. Armed merchant vessels of the latter are entitled to entry into American ports and American citizens may travel on the ships of State W. State U has a legitimate basis for grievance against the United States. Failure of the United States to be impartial in respect to its neutrality law, however, would not seem to deprive it of the protection of all the customary laws of neutrality. American citizens had a right to be on the vessel of State W, and the sinking, which was an act of war committed within the territorial waters of the United States, was flagrantly illegal. Had the sinking occurred on the high seas, the destruction without warning of an armed vessel would not be so serious (see discussion above on armed merchant vessels), but the United States cannot permit such an act within its territorial limits and should protest strongly to State U. Both the diplomatic and legal positions of the United States, however, are admittedly weakened by the adoption of the special partiality stand, and the situation well illustrates some of the complexities which can arise when a nation abandons strict neutrality without embarking upon the course of belligerency.

APPLICATION TO OTHER STATES "INVOLVED" IN WAR

Section 1b of the 1937 Neutrality law states that "the President shall, from time to time, by proclamation extend such embargo upon the export of arms, ammunitions, or implements of war to other states as and when they may become involved in such war" and the concluding part of section 1a of the Neutrality Act of 1939 also specifies that the President "shall from time to time by proclamation name other states as and when they may become involved in the war." Interpretation of the word "involve" is the central problem here. Foreign nations which engage in the war and become belligerents, apparently would be "involved" and probably would have to be named by the President in his proclamation, though there is room for argument on this point. In his proclamation of September 5, 1939, President Roosevelt, acting under the act of May 1, 1937, applied the arms embargo to France, Germany, Poland, the United Kingdom, India, Australia, and New Zealand, powers which were at war by virtue of unequivocal declarations of belligerency. South Africa and Canada, whose status was not exactly clear on September 5, were included by proclamations on September 8th and September 10th, respectively.

States engaged in the application of economic sanctions are not necessarily at war with the nation against which the measures are directed. Members of the League of Nations were not at war with Italy during the sanctions episode of 1935–36, even though they held the latter "had resorted to war" against Ethiopia. Sanctionist powers, therefore,

adopt the status of partiality and are neither neutral nor belligerent. It is up to the President to decide whether nations applying sanctions are "involved" or not. Executive discretion determines the matter. Since the enactment of the first neutrality law in 1935, the President has seen fit to interpret "involve" as meaning participation by a state as a full-fledged belligerent.

RÉSUMÉ

Adoption of special neutrality legislation by the United States has brought new problems. Issues arising under these domestic statutes must be clearly differentiated from those arising under general international law. New regulations concerning submarines, armed merchantmen and the treatment of Latin-American republics now supplement or contradict the customary international rules of neutrality. In regulating the entry of submarines and armed merchant vessels, in applying embargoes on loans and arms, and in making stipulations concerning trade and travel, the United States is clearly within its legal rights and is merely exercising its authority as conceded by the law of nations. The section relating to Latin America, however, calls under certain circumstances, for a position of partiality on the part of the United States which as a result may be called to account internationally for its unneutral conduct.

SOLUTION

(*a*) The submarine should be admitted. Whether, after entry it should be interned or allowed to make repairs and depart depends upon

whether all submarines are to be classed as warships or whether the American Government continues to recognize that some submarines can possess a genuinely commercial character.

(*b*) The action of the submarine of State U is illegal, constitutes a violation of American neutrality and should be protested by the United States. Despite its unneutral conduct in regard to Latin America, the United States is still a neutral and entitled to neutral rights, though its position is somewhat weakened by the application of section 8 of the law of 1937.

(*c*) The application of the provisions of the law of 1937 to states applying economic sanctions is a matter of executive discretion and not one of legal obligation.

Situation III

CONTIGUOUS ZONES, AIRPLANES, AND NEUTRALITY

State K has a leased area and has constructed a canal in State L upon terms identical with those existing between the United States and Panama. States U and V are at war. States K and L have issued declarations of neutrality. The Dominion of Vinta, which has the same relationship with State V that the British Dominions have with the United Kingdom, has issued a statement to the effect that it will abstain from participation in the war. State K has declared a "protective zone," extending for a radius of 100 miles to sea from both exits of the canal, in which all naval and military craft of any state are forbidden to hover or navigate unless intending to pass directly to or from the canal.

(a) The *Vera,* a merchant vessel of Vinta, is attacked when 75 miles from the canal by the *Union,* a cruiser of State U. The *Vera* asks for protection from the *Komlo,* a cruiser of State K, which is nearby.

(b) The *Vincent,* a cruiser of Vinta, remains in one of the canal ports for several days. State U protests to State K that the *Vincent* should be treated as a belligerent vessel.

(c) The *Vigo,* a cruiser of State V, while on patrol duty 110 miles from the canal, sends an airplane, the *V–1,* to a port in the canal zone for

needed medical supplies. The *V–1* takes back not only the medical supplies but also the naval attaché of the legation of State V in State L who has important information for the *Vigo*. State U protests to State K that the latter has failed to fulfill its neutrality obligations by permitting the airplane and the attaché to depart.

(d) States, L, U, and V protest to State K that the "protective zone" is illegal.

What are the legal rights in each case?

SOLUTION

(*a*) The commander of the *Komlo* should act to protect the *Vera,* thus conforming to the domestic law of his own State. The legality of the protective zone under international law depends upon its acceptance by other powers. In this instance, therefore, the protective zone is not recognized by international law and State U may attempt to hold State K internationally responsible.

(*b*) It is legally possible for Vinta to be a neutral State. If the Dominion of Vinta is recognized as a neutral by the belligerents, the *Vincent* may remain in the canal ports indefinitely.

(*c*) The *V–1* has no right to enter neutral jurisdiction and the authorities of State K in the Canal Zone should have used the means at their disposal to prevent the departure of *V–1.*

(*d*) States L, U, and V are not obliged to recognize the zone and their protests are legally valid.

NOTES

CONTIGUOUS ZONES

It is generally agreed that 3 miles is the *minimum* limit of territorial waters. The Interna-

tional Codification Conference at The Hague in 1930 demonstrated that there is no universal agreement upon the *maximum* extent of the littoral state's authority. The United States regards 3 miles as the limit of American jurisdiction, but other powers have made claims for wider belts. (See Naval War College, International Law Situations, 1928, and Harvard Draft Code, Territorial Waters, American Journal of International Law, Supplement, April 1929.) Within territorial waters, whatever may be their width, it is agreed that the State exercises complete jurisdiction, but beyond the marginal seas, international law recognizes an attenuated or more limited kind of jurisdiction for special purposes. As Gidel says:

"There is a maritime area beyond the limits of territorial waters, for an unspecified distance, in which the shore state possesses a certain jurisdiction over foreign vessels, a jurisdiction rigorously limited to specific objects."

(Le Droit International Public de la Mer, p. 361.)

Fixed or exact limits for the special contiguous areas do not exist. International law has simply recognized that in certain circumstances for limited purposes littoral states may extend their jurisdiction beyond territorial waters, and the limits of these areas vary and have varied greatly. Whether a contiguous zone is to be recognized in international law depends upon the willingness of other nations to accept the claims of a state making pretentions to such long-range jurisdiction. The law of nations recognizes the contiguous zone in principle, but fixes no bounds for it and does not specify in any comprehensive fashion as to type or kind. Each claim to a zone must be examined individually, and it is a characteristic of these areas

that their legal basis rests upon the attitude of foreign states in each case. Any new claim to jurisdiction over foreign ships beyond the customary marginal limits may meet with the objection of the foreign state or states affected. If the latter refuse to accord recognition, they may legally assert that the zone has no legal standing; if they give consent, either expressly or by failure, over a period of time, to make protest, the special area may be said to have been accepted as internationally valid.

A littoral state, therefore, has full jurisdiction for at least three miles and a limited and much modified jurisdiction for an indefinite number of miles beyond that. In the past, international law has recognized contiguous zones mainly for customs and fiscal purposes and only more recently has begun to take account of special jurisdiction for defensive or neutrality purposes. There is nothing new, therefore, about the contiguous zone in principle; what is apt to be new is the attempt of a state to apply the principle over an area or in regard to certain acts which other powers may not find acceptable. The declaration of authority in a contiguous zone is therefore not necessarily binding upon other nations initially. Through acceptance, tacit or overt, it may come to be recognized in the law of nations, or through rejection it may fail to obtain legal standing.

HISTORY OF CONTIGUOUS ZONES

It was in the realm of customs and finance that special areas of jurisdiction beyond the normal limits first came to be recognized in international law. British legislation of 1718 gave revenue au-

thorities permission to board vessels intending to enter British ports at a distance considerably beyond 3 miles. A similar law of 1784 specified 12 miles, and an act of 1805 declared a zone of 300 miles in which British ships, or vessels of certain foreign states, coming from certain countries loaded with certain goods of a certain quantity might be inspected by government agents. By legislation in 1853 and 1876 Great Britain abandoned all such efforts to control hovering and smuggling beyond the 3-mile limit, but the United States in 1790 and 1799 passed so-called hovering laws, modelled upon earlier British statutes, which permitted American revenue authorities to board foreign ships destined for an American port up to a distance of 12 miles from shore. The American Tariff Act of 1922 gave boarding rights within 12 miles even if the foreign craft had no intention of entering an American port. The treaties between the United States and other nations in 1924 granted American agents boarding rights within 1 hour's sailing distance from shore.

It must be emphasized that these rights within 12 miles or within 1 hour's sailing distance are strictly limited and do not grant the United States the complete jurisdiction which it of course possesses within the narrower band of territorial seas. It should also be stressed that the legislation just described was at first purely British or American domestic law and by no means constituted a part of international law. Through the years, however, American and British practice under these statutes was accepted by other nations which in their turn have enacted comparable legislation. In 1936 every state in the world except Great Britain, Ja-

pan, the Netherlands, Portugal, Yugoslavia, and Colombia had special customs zones. The practice and usage of nations therefore recognizes contiguous zones for customs purposes. In 1935 the United States enacted an antismuggling act (49 U. S. Stat. at Large, pt. 1, p. 517) which gave the President authority to proclaim so-called "customs enforcement areas" up to a distance 62 miles from the coast. Inasmuch as other states have not challenged the validity of this legislation it appears to have been regarded as not being incompatible with international law. This example well illustrates the point that customs areas have been accepted in principle and that each domestic alteration and extension depends upon the sufferance of other states. (For further information on contiguous zones in general and customs areas in particular see Gidel op. cit.; Harvard Draft Code on Territorial Waters, op. cit.)

CONTIGUOUS ZONES FOR DEFENSE AND OTHER PURPOSES

Whether international law recognizes contiguous zones in principal for other than customs purposes is more problematical, but such areas for purposes of sanitation, security, and national defense have definitely acquired some standing. As early as 1804 Chief Justice John Marshall of the United States Supreme Court in the celebrated case of *Church* vs. *Hubbart* (2 Cranch 187) declared that the power of a nation "to secure itself from injury may certainly be exercised beyond the limits of its territory." In 1864 the Government of France asked that the battle between the *Alabama* and the *Kear-*

sarge be fought at a safe distance (more than 3 miles) from the French coast, and in 1915 and 1916 the United States Government requested the British to order their warships not to hover close in to the 3-mile line. Though in each of these instances the requests were made and acceded to upon the basis of comity and not of legal right, they were indicative of a trend. (For an account of the hovering by British warships during the last war see Naval War College, International Law Situations, 1928, page 31.) By an act March 4, 1917 (39 Stat. 1194; Naval War College Situations, 1918, p. 162) the United States proclaimed certain "defensive sea areas" and on August 27, 1917, a similar sort of "defensive sea area" was proclaimed for Panama. (U. S. Off. Bull. 99, p. 8.) Though the zones included under these proclamations were not very extensive, the maximum width being only 13 miles, these "defense areas" constituted an important precedent and, having been apparently unchallenged, are of significance for the development of the principle of contiguous zones for defense purposes.

The Harvard Draft Code on Rights and Duties of Neutral States, op. cit., recognizes the principle of neutral jurisdiction for protective purposes beyond 3 miles:

ARTICLE 18. A belligerent shall not engage in hostile operations on, under or over the high seas so near to the territory of a neutral State as to endanger life or property therein.

ARTICLE 19. A belligerent shall not permit its warships or military aircraft to hover off the coasts of a neutral State in such manner as to harass the commerce or industry of that State.

THE DECLARATION OF PANAMA, OCTOBER 3, 1939

The Governments of the American Republics meeting at Panamá, have solemnly ratified their neutral status in the conflict which is disrupting the peace of Europe, but the present war may lead to unexpected results which may affect the fundamental interests of America and there can be no justification for the interests of the belligerents to prevail over the rights of neutrals causing disturbances and suffering to nations which by their neutrality in the conflict and their distance from the scene of events, should not be burdened with its fatal and painful consequences.

During the World War of 1914–1918 the Governments of Argentina, Brazil, Chile, Colombia, Ecuador, and Peru advanced, or supported, individual proposals providing in principle a declaration by the American Republics that the belligerent nations must refrain from committing hostile acts within a reasonable distance from their shores.

The nature of the present conflagration, in spite of its already lamentable proportions, would not justify any obstruction to inter-American communications which, engendered by important interests, call for adequate protection. This fact requires the demarcation of a zone of security including all the normal maritime routes of communication and trade between the countries of America.

To this end it is essential as a measure of necessity to adopt immediately provisions based on the above-mentioned precedents for the safeguarding of such interests, in order to avoid a repitition of the damages and sufferings sustained by the American nations and by their citizens in the war of 1914–1918.

There is no doubt that the Governments of the American Republics must foresee those dangers and as a measure of self-protection insist that the waters to a reasonable distance from their coasts shall remain free from the commission of hostile acts or from the undertaking of belligerent activities by nations engaged in a war in which the said governments are not involved.

For these reasons the Governments of the American Republics Resolve and Hereby Declare:

1. As a measure of continental self-protection, the American Republics, so long as they maintain their neutrality, are as of inherent right entitled to have those waters adjacent to the American continent, which they regard as of primary concern and direct utility in their relations, free from the commission of any hostile act by any non-American belligerent nation, whether such hostile act be attempted or made from land, sea or air.

Such waters shall be defined as follows. All waters comprised within the limits set forth hereafter except the territorial waters of Canada and of the undisputed colonies and possessions of European countries within these limits:

Beginning at the terminus of the United States-Canada boundary in Passamaquoddy Bay, in 44°46′36″ north latitude, and 66°54′11″ west longitude;

Thence due east along the parallel 44°46′36″ to a point 60° west of Greenwich;

Thence due south to a point in 20° north latitude;

Thence by a rhumb line to a point in 5° north latitude, 24° west longitude;

Thence due south to a point in 20° south latitude;

Thence by a rhumb line to a point in 58° south latitude, 57° west longitude;

Thence due west to a point in 80° west longitude;

Thence by a rhumb line to a point on the equator in 97° west longitude;

Thence by a rhumb line to a point in 15° north latitude, 120° west longitude;

Thence by a rhumb line to a point in 48°29′38″ north latitude, 136° west longitude;

Thence due east to the Pacific terminus of the United States-Canada boundary in the Strait of Juan de Fuca.

2. The Governments of the American Republics agree that they will endeavor, through joint representation to such belligerents as may now or in the future be engaged in hostilities, to secure the compliance by them with the provisions of this Declaration, without prejudice to the exercise of

the individual rights of each State inherent in their sovereignty.

3. The Governments of the American Republics further declare that whenever they consider it necessary they will consult together to determine upon the measures which they may individually or collectively undertake in order to secure the observance of the provisions of this Declaration.

4. The Americal Republics, during the existence of a state of war in which they themselves are not involved, may undertake, whenever they may determine that the need therefor exists, to patrol, either individually or collectively, as may be agreed upon by common consent, and insofar as the means and resources of each may permit, the waters adjacent to their coasts within the area above defined.

(Department of State Bulletin, Vol. 1, No. 15, October 7, 1939, pp. 331–333.)

BRITISH ADMIRALTY STATEMENT ON THE PANAMA DECLARATION

Several unofficial reports have been received recently of the important decisions reached at the Panama conference of the republics of America. These reports are to the effect that a neutral or safety zone of variously stated depth from the coast is to be established.

It is understood that the zone is in no way intended as an extension of territoral waters, but belligerents are to be invited to accept the limitation of their operations which would be involved by the scheme. This is clearly the wisest way of proceeding, since while belligerents, and particularly the Allies, may be anxious to assist all neutral countries in keeping war from the proximity of their coasts, it must be for them to decide whether or not to accept restrictions which would limit their enjoyment of certain well-established rights.

Neutral States are entitled and bound to demand that belligerents shall abstain from hostilities in their territorial waters and it is not a hostile act if a neutral repels even by force an attack upon his neutrality. During the great war Norway, Sweden, Spain and Holland forbade belligerent

submarines to enter their territorial waters except in case of distress.

In olden times many extravagant claims were put forward by the various nations as to the limit of their territorial waters, but since those days such claims have been drastically modified and it is now generally recognized that no country can properly claim jurisdiction over large areas of ocean nor the right to control or exclude the movements of foreign ships on the high seas this applies equally to belligerent operations though a belligerent can of course restrict his operations of his own free will if he so wishes.

Since the Great War the importance of the limit of territorial waters has been brought to the notice of the public in several ways, among others by reason of the national Prohibition Act of America. Resulting from discussions with Great Britain an agreement was reached in Washington in 1924 whereby the United States was given a right to board and examine any British vessel suspected of being engaged in liquor smuggling at a distance from the coast that could be traversed by that vessel in one hour.

By the same agreement Great Britain and America declared that it was their firm intention to uphold the principle that three marine miles extending from the coast line outwards and measured from low-water mark, should constitute the proper limits of territorial waters. Similar agreements were subsequently entered into by America with Germany and Sweden.

Certain bays, straits and canals have from time to time been the subject of special international agreement so that when questions of jurisdiction and sovereignty arise careful reference must be made to any agreements applicable to the particular case. The width of the general belt or territorial waters is now widely accepted as being three miles. Great Britain in common with many other countries has long refused to recognize claims to a territorial belt of great width.

(New York Times, October 14, 1939.)

AMERICAN REPUBLICS' STATEMENT ON THE "GRAF VON SPEE" INCIDENT

Following the procedure of consultation provided in the Declaration of Panama, the 21 American republics have

agreed upon the following statement which the President of the Republic of Panama has transmitted in their names to the Governments of France, Great Britain, and Germany:

"The American Governments are officially informed of the naval engagement which took place on the thirteenth instant off the northeastern coast of Uruguay, between certain British naval vessels and the German vessel *Graf Von Spee*, which, according to reliable reports, attempted to overhaul the French merchant vessel *Formose* between Brazil and the port of Montevideo after having sunk other merchant vessels.

"They are also informed of the entry and scuttling of the German warship in the waters of the River Plate upon the termination of the time limit which, in accordance with the rules of international law, was granted to it by the Government of the Republic of Uruguay.

"On the other hand, the sinking or detention of German merchant vessels by British vessels in American waters is publicly known, as appears—to begin with—from the recent cases of the *Dusseldorf*, *Ussukuma*, and others.

"All these facts which affect the neutrality of American waters, compromise the aims of continental protection provided for by the Declaration of Panama of October 3, 1939, the first paragraph of which establishes:

" 'As a measure of continental self-protection, the American Republics, so long as they maintain their neutrality, are as of inherent right entitled to have those waters adjacent to the American continent, which they regard as of primary concern and direct utility in their relations, free from the commission of any hostile act by any non-American belligerent nation, whether such hostile act be attempted or made from land, sea, or air.'

"Therefore, in accordance with the method provided for in that instrument and with a view to avoiding the repetition of further events of the nature to which reference is made above, the American nations resolve to lodge a protest with the belligerent countries and to initiate the necessary consultation in order to strengthen the system of protection in common through the adoption of adequate rules, among them those which would prevent belligerent vessels from

supplying themselves and repairing damages in American ports, when the said vessels have committed warlike acts within the zone of security established in the Declaration of Panama."

(Department of State Bulletin, Vol. 1, No. 26, December 23, 1939, p. 723.)

BELLIGERENTS' REPLY TO NEUTRALITY ZONE PROTEST

Great Britain:

1. His Majesty's Government of the United Kingdom have devoted most careful consideration to the communication agreed upon unanimously by the twenty-one American republics, the text of which was telegraphed to His Majesty the King by the Acting President of Panama on Dec. 23 last.

In that communication reference was made among other matters to the recent naval action between British and German warships in the South Atlantic and to the maritime security zone described in the declaration at Panama on Oct. 3, 1939.

2. His Majesty's Government, who themselves for so long strove to prevent war, fully appreciate the desire of the American republics to keep war away from shores of the American Continent. It was, therefore, not merely with interest but with understanding that His Majesty's Government learned of the maritime security zone proposal.

His Majesty's Government noted with satisfaction from the Declaration of Panama itself that an attempt would be made to base observance of its provisions upon the consent of the belligerents. This fresh expression of adherence to the idea of solving international difficulties by mutual discussion, which always has been upheld by the American Republics, confirmed His Majesty's Government's belief that these powers would not attempt to enforce observance of the zone by unilateral action and encouraged their hope that it would be possible to give effect, by means of negotiation, to the intentions which inspired it.

3. It was in this spirit that His Majesty's Government were examining the proposal of the conference of Panama at the time when the communication of Dec. 23 was received. In

view of this communication, His Majesty's Government desire to draw attention of the American Republics to the following considerations:

4. It will be apparent, in the first place, that the proposal, involving as it does abandonment by belligerents of certain legitimate belligerent rights, is not one which, on any basis of international law, can be imposed upon them by unilateral actions and that its adoption requires their specific assent.

5. Acceptance by His Majesty's government of the suggestion that belligerents should forego their rights in the zone must clearly be dependent upon their being satisfied that adoption of the zone proposal would not provide German warships and supply ships with vast sanctuary from which they could emerge to attack Allied and neutral shipping, to which they could return to avoid being brought into action and in which acts of unneutral service might be performed by German ships, for example, by using wireless communications.

It would also be necessary to insure that German warships and supply ships would not be enabled to pass with impunity from one ocean to another through the zone, or German merchantships to take part in inter-American trade and earn foreign exchange which might be used in attempts to promote subversion and sabotage abroad and procure supplies for prolongation of the war, thus depriving the Allies of the fruits of their superiority at sea.

6. Moreover, acceptance of the zone proposals would have to be on the basis that it should not constitute a precedent for far-reaching alteration of existing laws on maritime neutrality.

7. Unless these points are adequately safeguarded, the zone proposals might only lead to accumulation of belligerent ships in the zone. This, in turn, might well bring the risk of war nearer the American States and lead to friction between, on the one hand, the Allies, pursuing their legitimate belligerent activities, and, on the other, the American republics endeavoring to make this new policy prevail.

8. The risk of such friction, which His Majesty's Government would be the first to deplore, would be increased by the

application of sanctions. His Majesty's Government must emphatically repudiate any suggestion that His Majesty's ships have acted or would act in any way that would justify adoption by neutrals of punitive measures which do not spring from accepted canons of neutral rights and obligations.

If, therefore, the American States were to adopt a scheme of sanctions for enforcement of the zone proposal they would, in effect, be offering sanctuary to German warships within which His Majesty's ships would be confronted with the invidious choice of having either to refrain from engaging their enemy or of laying themselves open to penalties in American ports and waters.

9. Up to the present it does not appear that means have been found by which disadvantages of the zone proposals could be eliminated. That this is the case was shown by operation in the zone of the warship *Admiral Graf Spee* and the supply ship *Tacoma*. With regard to specific incidents, of which mention was made in communications under reply, His Majesty's Government must observe that legitimate activities of His Majesty's ships can in no way imperil but must rather contribute to the security of the American Continent, protection of which was the object of the framers of the Declaration of Panama.

His Majesty's Government cannot admit that there is any foundation for the claim that such activities have in any way exposed them to justifiable reproach, seeing that the zone proposal had not been made effective and belligerent assent had not yet been given to its operation.

10. In view of the difficulties described above, it appears to His Majesty's Government that the only method of achieving the American object of preventing belligerent acts within the zone would be: firstly, to ensure that the German Government would send no more warships into it; secondly, there are obvious difficulties in applying the zone proposal at this stage of the war when so much German shipping already has taken refuge in American waters.

If the Allies are asked to forego the opportunity of capturing these vessels it would also seem to be necessary that

they should be laid up under Pan-American control for the duration of the war.

11. In the view of His Majesty's Government, it would only be by means such as those indicated that the wish of American governments to keep war away from their coasts could be realized in a truly effective and equitable manner. Until His Majesty's Government are able to feel assured that the scheme will operate satisfactorily they must, anxious as they are for fulfillments of American hopes, necessarily reserve their full belligerent rights in order to fight the menace presented by German action of policy and to defend that conception of law and that way of life which they believe to be as dear to the people's governments of America as they are to the people's governments in the British Commonwealth of Nations.

(Department of State Bulletin, Vol. 11, No. 35, February 24, 1940, pp. 199–201.)

France:

The French Government has attentively examined the Panama President's communication of Dec. 23, following the unanimous accord of the twenty-one American republics. The communication referred to the naval action occurring between British and German men-of-war after the [German pocket battleship] *Admiral Graf Spee* attempted to reach the French freighter *Formose* in order to destroy it.

2. This communication refers to the desire manifested by the American republics in their declaration of Panama to see war excluded from the shores of the American continents. The French Government, which for a long time has sought to avoid war, fully appreciates the American republics' desire and has examined in the most sympathetic spirit their proposal tending to the creation of a maritime security zone.

The French Government interprets the demarches made in behalf of the American governments, including that of Dec. 23 as well as the previous communication of the Declaration of Panama, as implying in the minds of the American governments that the constitution of such a zone, involving renunciation by belligerent states of the exercise in vast territories of rights well established by international custom, could only result from an accord between all the interested states.

3. Recent facts discussed in the communication addressed to the French Government in behalf of the twenty-one American republics clearly illustrate the situation which is to be regulated. These facts proceed from the *Admiral Graf Spee's* attempt to attack and destroy in the maritime security zone the French cargoship *Formose*. It is clear that under the present circumstances of war such attempts by German vessels can have no effect upon the outcome of the war.

It is no less clear, however, that if such acts are committed or attempted, France and Great Britain are strictly entitled to carry out counter-attacks in useful time and that they cannot be asked to renounce that right. It follows that if the security zone is to materialize as desired by the American governments, it is indispensable that the latter give the French Government satisfactory assurance that the German Government will not send warships or supply ships into the zone.

The incontestable superiority France and Great Britain have over Germany in the Atlantic and the Pacific has had the result that many German cargo ships have been able to escape legitimate exercise of the prize law only by taking refuge in American ports. The institution of a security zone ought not to have the effect of liberating them, thus depriving the Allies of advantages following from their naval superiority over Germany. Hence it ought to entail effective measures taken by each American government calculated to keep German ships in ports where they have taken refuge.

5. The American governments do not appear to envisage or assume responsibility to ensure in the vast spaces constituting their neutrality zone repression of acts of hostile assistance or un-neutral service. The possibility of such acts is so great, especially in view of radio communication, that the French naval forces should not be deprived of the right of preventing them and repressing them by all means within the limits of international law.

6. It is on this basis, if the American governments obtain its acceptance by all belligerents, that realization of the aim desired by the American governments ought to be sought, in the opinion of the French Government.

7. The French Government realizes that in view of the novelty of methods and extension of the zone, divergence of

views may arise in concrete cases. These might, at least, be easily treated by diplomatic channels if one chooses to apply the method of frank discussion and mutual accord regarding principle as well as application. On the contrary, regrettable friction might be provoked if unilateral procedure were adopted, abandoning the habitual practice of nations.

These frictions would be particularly grave if they arose from punitive measures against ships not guilty of any infraction of international law. Refusal in such cases to grant refuge or refueling possibilities to a warship would constitute an unpleasant contrast with the line of conduct that the Uruguayan Government adopted with regard to the *Admiral Graf Spee.*

8. The French Government hopes by this exposition of views to have contributed to realization of the aims inspiring the twenty-one American republics. At the same time it expects that the latter will admit that as long as no accord is reached on the above basis the French Government retains full exercise of a belligerent's rights based upon international law, which must enable it to safeguard the principles of right and the conception of life which it shares with the American governments and peoples.

(Ibid. pp. 201–203.)

Germany:

(1) The German Government welcomes the intention of the American Republics, expressed in the Declaration of Panama, to maintain strict neutrality during the present conflict, and fully understands that they wish, as far as possible, to take precautionary action against the effects of the present war on their countries and peoples.

(2) The German Government believes itself to be in agreement with the American Governments that the regulations contained in the Declaration of Panama would mean a change in existing international law and infers from the telegram of October 4th of last year that it is desired to settle this question in harmony with the belligerents. The German Government does not take the stand that the hitherto recognized rules of international law were bound to be regarded as a rigid and forever immutable order. It is rather of the opinion that these rules are capable of and

require adaptation to progressive development and newly arising conditions. In this spirit, it is also ready to take up the consideration of the proposal of the neutral American Governments. However, it must point out that for the German naval vessels which have been in the proposed security zone so far, only the rules of law now in effect could, of course, be effective. The German naval vessels have held most strictly to these rules of law during their operations. Therefore in so far as the protest submitted by the American Governments is directed against the action of German warships, it cannot be recognized by the German Government as well grounded. It has already expressed to the Government of Uruguay its divergent interpretation of the law also in the special case mentioned in the telegram of the Acting President of the Republic of Panama of December 24th. Besides, the German Government cannot recognize the right of the Governments of the American Republics to decide unilaterally upon measures in a manner deviating from the rules hitherto in effect, such as are to be taken under consideration by the American Governments against the ships of the belligerent countries which have committed acts of war within the waters of the projected security zone, according to the telegram of December 24th of last year.

(3) Upon considering the questions connected with the plan for the establishment of the security zone, there arises first of all one important point which causes the situation of Germany and the other belligerent powers to appear disparate with respect to this: that is, while Germany has never pursued territorial aims on the American continent, Great Britain and France have, however, during the course of the last few centuries, established important possessions and bases on this continent and the islands offshore, the practical importance of which also with respect to the questions under consideration here does not require any further explanation. By these exceptions to the Monroe Doctrine in favor of Great Britain and France the effect of the security zone desired by the neutral American Governments is fundamentally and decisively impaired to start with. The inequality in the situation of Germany and her adversaries that is produced hereby might perhaps be eliminated to

a certain extent if Great Britain and France would pledge themselves, under the guaranty of the American States, not to make the possessions and islands mentioned the starting points or bases for military operations; even if that should come about the fact would still remain that one belligerent state, Canada, not only directly adjoins the zone mentioned in the west and the east, but that portions of Canadian territory are actually surrounded by the zone.

(4) Despite the circumstances set forth above, the German Government, on its side, would be entirely ready to enter into a further exchange of ideas with the Governments of the American Republics regarding the putting into effect of the Declaration of Panama. However, the German Government must assume from the reply of the British and French Governments, recently published by press and radio, that those two governments are not willing to take up seriously the idea of the security zone. The mere fact of the setting up of demands according to which entrance into the zone mentioned is not to be permitted to German warships, while the warships of the adversaries are officially to retain the right to enter the zone without restriction, shows such a lack of respect for the most elementary ideas of international law and imputes to the governments of the American states such a flagrant violation of neutrality that the German Government can see therein only the desire of the British and French Governments to do away with the basic idea of the security zone, first of all.

(5) Although the German Government is entirely ready to enter into the proposals and suggestions of the American states in this field, the German Government can feel certain of a success of the continuation of the plan of the security zone only when the British and French position that has been made known is fundamentally revised.

(Ibid. pp. 203–205.)

INTERNATIONAL LAW AND THE DECLARATION OF PANAMA

As previously indicated, there is evidence in the practice of nations to support the assertion that, in principle, neutral states may exercise their au-

thority over foreign ships beyond the territorial limits with the aim of protecting their shores from the effects of belligerent operations. How far may neutrals exercise their authority over the vessels of warring powers? No definite answer can be given to this query. It must be remembered that the neutrals' jurisdiction is one strictly limited to the ends of national defense; the neutral may not exercise general authority over belligerent warships outside of the area of territorial waters, but has a right to adopt only those measures which clearly are required to safeguard neutral life and property. Upon the high seas, by immemorial right, the belligerent may visit and search neutral craft, may capture enemy merchant ships, and may attack enemy warships. The neutral claims as to defense may thus come into direct conflict with a belligerent's rights upon the high seas. Neutral defense jurisdiction must thus be narrowly circumscribed and must not exceed the genuine requirements of domestic safety. The principle of contiguous zones for neutrals is probably crystallizing, but there is certainly no law concerning the *extent* of such areas. Belligerents have the legal right to challenge each specific assertion of jurisdiction, and a neutrality zone cannot be said to have been accepted into international law as long as other nations withhold their assent. The ability of the neutral to patrol the area involved and to exercise the jurisdiction claimed is also an important factor. Belligerents naturally would be reluctant to refrain from hostility in wide areas in which a neutral could not possibly maintain any reasonable degree of authority. Some fairly close correspondence

must exist between the claims to authority and the ability to exercise authority.

The Declaration of Panama is not a part of international law. Neutral jurisdiction for defense purposes over a part of the ocean extending 300 miles from the coast is without precedent and has not been generally accepted. There is agreement probably upon the principle but not upon its application to such a tremendously wide belt. Great Britain, France, and Germany were acting within their legal rights when they refused to recognize the binding nature of the Panama Declaration. Only the status of that Declaration in international law is being discussed here; its feasibility politically or otherwise is an entirely separate problem.

APPLICATION TO THE PRESENT CASE

Though the protective zone proclaimed by State K is of doubtful standing in international law, the commander of the cruiser *Komlo* must obey the orders of his home government and should use force if necessary to protect the *Vera* from attack by the *Union*. State U, however, may protest to State K and may claim that it has been deprived of one of its legitimate belligerent rights. State K cannot make international law unilaterally. Its protective zone is not necessarily binding upon belligerents, and if these latter refuse to accord recognition to the zone, State K may well be held liable for an infringement upon the rights of the states at war. In this instance, however, a zone extending 100 miles from the exits of a canal, that is, a zone proclaimed within a fairly limited area and having a close relation to the canal's defense requirements,

seems to have a much better chance of obtaining universal acceptance than the far more extensive claims put forth in the Declaration of Panama. The fact that State K could doubtless patrol such an area in reasonably effective fashion makes the project a rather feasible one. Therefore in time State K might persuade other nations to accord it recognition, but, at the moment, the belligerent powers are under no obligation to look upon it as law.

NEUTRALITY OF THE BRITISH DOMINIONS

Prior to the outbreak of war in September 1939, there was considerable discussion concerning the legal authority of the British Dominions to be neutral in any war in which Great Britain was a belligerent. Common ties with the Crown, common British citizenship, and special military and naval rights of Great Britain within Dominion territories were among the factors which seemed to preclude the possibility that some parts of the British Commonwealth of Nations could remain aloof from a conflict in which other portions of the Commonwealth were engaged. The Union of South Africa, however, made provision in its Constitution in 1926 that the Union never could be at war without the consent of its own Parliament, and Article 28 of the Irish Free State Constitution, which went into effect on December 29, 1937, likewise provided that the Free State could not be involved in war save by its own will. (Constitution of Ireland, Article 28, section 3, subsection 1. H. M. Stationery Office, *Constitutions of All Countries,* Vol. I: The British Empire, p. 206.) By the Treaty of

April 25, 1938, between Great Britain and the Irish Free State (Eire, Treaty Series, 1938, No. 1) the former surrendered to the latter all authority over the naval bases of Berehaven, Cobh, and Lough Swilly, ports which the British had kept within their jurisdiction in the Articles of Agreement of December 6, 1921, between the Free State and Great Britain. As a result of these constitutional provisions and treaty arrangements, the legal obstacles in the way of adoption of neutrality by the Free State and the Union of South Africa had been largely removed, though the obligations of the latter in regard to the naval base at Simondstown still continued to complicate matters for the Union Government. The other Dominions, Canada, Australia, and New Zealand, lacked legislation on the subject of neutrality. It was thought in some quarters that a Dominion might adopt a position of "passive" neutrality, a status with implications of much ambiguity for international law.

In the main, however, the neutrality of the Dominions depends upon the facts in any given situation. If a Dominion declares that it is neutral and if the belligerents recognize it as neutral, then it is neutral. It is a question of actuality not theory, as was demonstrated by the events of September 1939. On September 2, the Dail Eireann approved Prime Minister de Valera's policy of neutrality, and on September 3, the German Minister to Dublin, Dr. Eduard Hempel, informed the President that the German Government would respect Eire's neutrality provided that neutrality was adhered to. Ireland's neutrality thus became a reality on the day on which hostilities were declared. (The London Times, September 4, 1939.)

A subject which arose for consideration shortly after the commencement of the war was merchant shipping registration. Since Ireland had declared neutrality and since this status had been immediately accepted by all belligerents, it appeared at first that ships having Irish registry would probably welcome the right to use the Irish flag since this should be respected as a neutral flag in accord with the provisions of international law. Indeed it would have been thought that Ireland would have been confronted with the problem of British ships seeking registry, a matter which would ordinarily present no problem, but which might draw sharp German protest if permitted after the outbreak of war.

On the contrary, one ship was transferred from Irish to British registry while at sea and was sunk by a German submarine when allegedly flying the Irish flag, possibly innocently, since it might not have been informed of the change of registry. In addition, other ships were transferred and in some instances the transfers appear to have been made at the insistence of the crews, who were reported to have expressed a preference for sailing under the British flag.

"In the dispatch of the 15th it was reported that three British and Irish Steam Packet Company mail ships had transferred from Irish to British registry, while on the 19th a similar transfer of three L. M. S. ships was announced and the probable transfer of other ships of the same line, then registered in Dublin, was predicted. In the case of the L. M. S. ships, the reason given for transfer was the refusal of the crews to sail, since otherwise they feared that, if sunk, their dependents would not be compensated for injury or loss of life."

(The London Times, September 19, 1939.)

By the end of September, according to a report made to Dail Eireann by Mr. MacEntee, Minister of Commerce and Industry, 18 ships had been withdrawn from Irish and transferred to British registry. These ships, all owned by two companies, incorporated in Great Britain, accounted for a large portion of the shipping tonnage which had been under Irish registry under the Merchant Shipping Act, 1894. (Eire, Dail Eireann, Parliamentary Debates, *Official Report,* September 27, 1939, col. 220–221.)

The Parliament of the Union of South Africa on September 5, 1939, rejected the proposal of Prime Minister Hertzog that relations with the belligerent countries remain unchanged by a vote of 80 to 66, and the Union entered the war on the side of Great Britain under the leadership of a new cabinet headed by General Smuts. (New York Times, September 6, 1939.) The Prime Ministers of Australia and New Zealand announced on September 3 that their Dominions were at war with Germany (New York Times, September 4, 1939), and also at Ottawa on September 3, 1939, it was announced by the Government that Canada was at war with Germany according to the principle that "when Britain is at war, Canada is at war." (New York Times, September 4, 1939.) However, this governmental statement was not followed by any formal declaration of war, Canada was not included as a belligerent in President Roosevelt's first neutrality proclamation on September 5, and it was not until September 10, 1939, that Canada by Parliamentary action formally became a belligerent. What the exact status of Canada was from September 3 to September 10 is something for lawyers

to investigate, but the fact remains that Canada, along with three other Dominions, was not neutral at any time, and that the Irish Free State succeeded in its attempt to follow the line of neutrality.

In Situation II, therefore, if the Dominion of Vinta is the Irish Free State, the *Vincent* is a cruiser of a neutral power and may remain indefinitely in the canal port. If Vinta, however, happens to be Canada, New Zealand, Australia, or the Union of South Africa, the *Vincent* should be treated as a belligerent warship and should be subject to all the neutrality regulations as to length of stay, repairs, supplies, etc.

AIRPLANES IN NEUTRAL TERRITORY

It can now be said to be international law that belligerent war planes have no right to fly into or through neutral jurisdiction. The subjacent neutral state has complete jurisdiction over the air, and the practice of neutrals in the last war and the provisions of codes and conventions since that time established the fact that the military planes of belligerents are barred from flight in neutral air. Naval airplanes attached to a warship are considered to be a part of the ship as long as they are in contact with the vessel. Such planes, therefore, if actually on board a warship, may enter a neutral harbor, but they may not leave the war vessel to fly over the neutral's domain. (See Spaight, "Air Power and War Rights" pp. 421–433.) From 1914 to 1918 The Netherlands, Switzerland, and other neutrals barred belligerent military planes from their superadjacent air and enforced their prohibitions by gunfire. (See Naval War College, International Law Situations, 1936, pp.

74–75.) The United States proclaimed in 1915 that:

Aircraft of a belligerent power, public or private, are forbidden to descend or arise with the jurisdiction of the United States at the Canal Zone or to pass through the air spaces above the lands and waters within said jurisdiction. (Naval War College, International Law Situations, 1915, p. 14; see also Proclamation of May 23, 1917 Naval War College, International Law Situations, 1917, p. 245.)

The Commission of Jurists report of 1923 stipulates that:

Article 40: Belligerent military aircraft are forbidden to enter the jurisdiction of a neutral state.

Article 41: Aircraft on board vessels of war, including aircraft carriers, shall be regarded as part of such vessels.

Article 42: A neutral government must use the means at its disposal to prevent the entry within its jurisdiction of belligerent military aircraft and to compel them to alight if they have entered such jurisdiction.

A neutral government shall use the means at its disposal to intern any belligerent military aircraft which is within its jurisdiction after having alighted for any reason whatsoever, together with its crew and the passengers, if any.

Harvard Draft Code, Rights and Duties of Neutral States in Naval and Aerial War, op. cit. declares:

Article 94: A neutral State shall require a belligerent military aircraft which is in its territory at the time of outbreak of war, to depart therefrom within twelve hours. The neutral State shall use the means at its disposal to intern belligerent military aircraft found in its territory after the expiration of this period.

Article 95: A neutral State shall use the means at its disposal:

(a) To prevent belligerent military aircraft from entering its territory; and

(b) to compel them to alight if they have entered, and

(c) To intern them after they have alighted, whether the landing be voluntary or forced, together with persons and property on board.

The Havana Convention on Maritime Neutrality, 1928, (Hudson International Legislation Vol. IV, p. 2401), states in Article 14 that:

The airships of belligerents shall not fly above the territory or the territorial waters of neutrals if it is not in conformity with the regulations of the latter.

From the Danish rules on neutrality, Article 8, of 1938 (Scandinavian Rules of Neutrality, American Journal of International Law, October 1938, Official Documents, p. 145) comes again a similar statement declaratory of international law on this subject:

Military aircraft of the belligerents, with the exception of aerial ambulances and aerial transports on board warships, shall not be admitted into Danish territory, except when regulations to the contrary apply or may become applicable so far as certain spaces are concerned conformable to the general principles of international law.

In his proclamation prescribing regulations concerning neutrality in the Canal Zone, September 5, 1939, (See the appendix of this volume for the complete proclamation) the President stated that:

No belligerent aircraft shall be navigated into, within, or through the air spaces above the territory or waters of the Canal Zone.

NEUTRAL TERRITORY AS A BASE

One of the rules fundamental to the entire legal edifice of neutrality is that which specifies that neutral territory shall not be used as a base of military or naval operations, and neutral powers are required to use the means at their disposal to prevent

such employment on the behalf of one of the belligerents. Expeditions are not to set forth from or sail from neutral jurisdiction, and neutrals must endeavor to prevent a belligerent fleet from using neutral territory as a base of supplies or as a source of military information and guidance. For these reasons belligerents may not erect or operate radio stations on neutral soil and must not attempt to obtain information by means of special signals or messengers coming from neutral jurisdiction. A neutral state is not bound to prevent the transmission of information by means of cable, coastal communication or telecommunication other than radio. The distinction between radio, messengers and mechanical signal devices on the one hand, and cables, mail and telecommunications on the other, is based upon the fact that the former can be so easily employed for the relaying of important information to a belligerent fleet or force outside of neutral jurisdiction, and also to the fact that such methods of communication are almost impossible for the other belligerent to intercept or prevent, whereas cables and the postal services can scarcely be used to direct belligerent operations from neutral territory and also may be cut or intercepted by the opposing belligerent.

Neutrals are now under the obligation to prevent the fitting out and arming of planes and the departure of such military airplanes from their territory, a rule comparable to that evolved in regard to surface vessels at the time of the Alabama Claims Arbitration in the last century. "An expedition may consist of a single airplane if manned and equipped in a manner which would enable it to

take part in hostilities." (From the comment on Article 46 of the Committee of Jurists Report, 1923, op. cit.) The Government of the United States was confronted with the problem of preventing the departure of airplanes equipped and ready for military operations after the repeal of the so-called Arms Embargo on November 4, 1939. (Statement, in Appendix, on flights of military aircraft, December 7, 1939.) An airplane in a condition to make a hostile attack could not legally be permitted to leave American jurisdiction, and certainly the United States could not permit the departure of a military or naval belligerent plane carrying a messenger to a cruiser of a belligerent power. The rules in regard to the flight of belligerent military planes over neutral territory and those forbidding the use of neutral territory as a base would be violated if such an event were permitted to occur.

NEUTRALITY LAW RESTRICTIONS ON USE OF AMERICAN PORTS: NOVEMBER 4, 1939

Sec. 10 (a)—Whenever, during any war in which the United States is neutral, the President, or any person thereunto authorized by him, shall have cause to believe that any vessel, domestic or foreign, whether requiring clearance or not, is about to carry out of a port or from the jurisdiction of the United States, fuel, men, arms, ammunition, implements of war, supplies, dispatches, or information to any warship, tender, or supply ship of a State named in a proclamation issued under the authority of Section 1 (a), but the evidence is not deemed sufficient to justify forbidding the departure of the vessel as provided for by Section 1, Title V, Chapter 30, of the act approved June 15, 1917 (40 Stat. 217, 221; U. S. C., 1934 Edition, Title 18, Sec. 31), and if, in the President's judgment, such action will serve to maintain peace between the United States and foreign States, or to

protect the commercial interests of the United States and its citizens, or to promote the security or neutrality of the United States, he shall have the power and it shall be his duty to require the owner, master, or person in command thereof, before departing from a port or from the jurisdiction of the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that the vessel will not deliver the men, or any fuel, supplies, dispatches, information, or any part of the cargo, to any warship, tender, or supply ship of a State named in a proclamation issued under the authority of Section 1 (a).

(b) If the President, or any person thereunto authorized by him, shall find that a vessel, domestic or foreign, in a port of the United States has previously departed from a port or from the jurisdiction of the United States during such war and delivered men, fuel, supplies, dispatches, information or any part of its cargo to a warship, tender or supply ship of a State named in a proclamation issued under the authority of Section 1 (a) he may prohibit the departure of such vessel during the duration of the war.

(c) Whenever the President shall have issued a proclamation under Section 1 (a) he may, while such proclamation is in effect, require the owner, master or person in command of any vessel, foreign or domestic, before departing from the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that no alien seaman who arrived on such vessel shall remain in the United States for a longer period than that permitted under the regulations, as amended from time to time, issued pursuant to Section 33 of the Immigration Act of Feb. 5, 1917 (U. S. C., Title 8, Sec. 168). Notwithstanding the provisions of said section, he may issue regulations with respect to the landing of such seamen as he deems necessary to insure their departure either on such vessel or another vessel at the expense of such owner, master or person in command.

(Public resolution No. 54, 76th Cong., 2d sess.)

PRESIDENT'S PROCLAMATION SEPTEMBER 5, 1939

Among the acts forbidden by proclamation of the President on September 5, 1939, were the following:

11. Knowingly beginning or setting on foot or providing or preparing a means for or furnishing the money for, or taking part in, any military or naval expedition or enterprise to be carried on from the territory or jurisdiction of the United States against the territory or dominion of a belligerent.

12. Dispatching from the United States, or any place subject to the jurisdiction thereof, any vessel, domestic or foreign, which is about to carry to a warship, tender or supply ship of a belligerent any fuel, arms, ammunition, men, supplies, dispatches or information shipped or received on board within the jurisdiction of the United States.

(4 Federal Register, p. 3809.)

CODES AND CONVENTIONS ON USE OF NEUTRAL TERRITORY

Article 3 of Hague Convention V of 1907 and article 5 of Hague Convention XIII, 1907, contain provisions which forbid belligerents to erect wireless telegraphy stations on neutral soil or to employ neutral ports and waters as a base of naval operations. Article 3 of the Havana Convention on Maritime Neutrality, op. cit., contains a like prohibition. Article 46 of the previously cited Jurists Report deals with the subject of departure of belligerent airplanes, and in section 2 of the same article provides that the neutral is bound "to prevent the departure of an aircraft the crew of which includes any member of the combatant forces of a belligerent power." Relevant articles from the

Harvard Draft Code on Neutrality, op. cit., are as follows:

Article 9: (1) a neutral State shall use the means at its disposal to prevent:

(a) the erection or operation of any radio station within its jurisdiction by a belligerent; and

(b) the transmission from its jurisdiction of military information destined for a belligerent by radio or by mechanical means of communication.

(2) A neutral State is not bound to use the means at its disposal to prevent the transmission from its territory of military information destined for a belligerent by means of postal communication, telecommunications other than radio, messengers or other means of communication not provided for in section (1) of this article.

Article 99: A neutral state shall use the means at its disposal:

(a) To prevent the fitting out or arming within its territory of an aircraft which is intended to engage in hostile operations against a belligerent;

(b) To prevent, subject to Article 94, the flight from its territory of any aircraft which is intended to engage in hostile operations against a belligerent or which is intended to perform services of a military character for a belligerent.

UNITED STATES TREATY WITH PANAMA

On July 26, 1939, a general treaty between the United States and Panama, signed at Washington on March 2, 1936, was proclaimed by the President and went into effect on that day. This treaty provided for a revision in certain particulars of the United States-Panama Treaty of 1903 (Treaty Series No. 431) and also contained provisions supplementary to the earlier agreement. A summary of the articles of the treaty, as printed in the Department of State Bulletin (Vol. I, No. 5, July 29, 1939, pp. 83–85) is as follows:

Article I establishes a basis of friendship and cooperation between Panama and the United States.

Article II. The compliance of Panama with the provisions of article II of the convention of November 18, 1903, in turning over to the United States additional lands and waters beyond those specifically mentioned there is recognized. The requirement of further lands and waters is considered improbable by both Governments, but they nevertheless recognize their joint obligation to insure the continuous operation of the Canal and agree to reach the necessary understanding should additional lands and waters be in fact necessary for this purpose.

Article III contains various provisions restricting the commercial activities of the United States in the Canal Zone in order that Panama may take advantage of the commercial opportunities inherent in its geographical situation. In this article are listed the classes of persons who may reside in the Canal Zone and the persons who are entitled to make purchases in the Canal Zone commissaries.

Article IV provides for the free entry of merchandise entering Panama destined for agencies of the United States Government and provides that no taxes shall be imposed upon persons in the service of the United States entering Panama or upon residents of Panama entering the Canal Zone.

Article V provides that port facilities other than those owned by the Panama Railroad Co. in the ports of Panamá and Colón may be operated only by Panama; exempts from Panamanian taxation vessels using the Canal which do not touch at ports under Panamanian jurisdiction; and provides for the establishment of Panamanian customhouses within the Canal Zone. The United States undertakes to adopt such administrative regulations as may be necessary to assist Panama in controlling immigration into that country.

Article VI revises article VII of the convention of November 18, 1903, in that the United States renounces the right to acquire, by the exercise of the right of eminent domain, lands or properties in or near the cities of Panamá and Colón, although retaining the right to purchase necessary lands or properties. The third paragraph of the said

article VII, granting the United States the right to intervene in the cities of Panamá and Colón and the territory adjacent thereto for the purpose of maintaining order, is abrogated.

Article VII provides that beginning with the 1934 annuity payment the annual amounts of these payments shall be four hundred thirty thousand balboas (B/430,000.00) or the equivalent thereof. In a supplementary exchange of notes the balboa is defined as having a gold content equal to that of the present United States dollar.

Article VIII provides for a corridor under Panamanian jurisdiction to connect the city of Colón with other territory of Panama.

Article IX establishes a similar corridor under American jurisdiction to connect the Madden Dam area with the Canal Zone proper.

Article X provides that in case of emergency both Governments will take such measures of prevention and defense as they may consider necessary for the protection of their common interests.

Article XI reserves to each country all rights enjoyed by virtue of treaties now in force between the two countries, and preserves all obligations therein established, with the exception of those rights and obligations specifically revised by the present treaty. The juridical status of the Canal Zone, as defined in article III of the 1903 convention, thereby remains unaltered.

Article XII provides that the treaty shall take effect immediately on the exchange of ratifications in Washington.

There were 16 exchanges of notes signed on March 2, 1936, and 1 signed on February 1, 1939, interpreting and defining certain provisions of the General Treaty. These notes will be printed in Treaty Series No. 945.

On the occasion of the exchange of ratifications of the General Treaty Between the United States and Panama, signed March 2, 1936, the Secretary of State made the following remarks:

"The present occasion marks an important milestone in our relations with the Republic of Panama. It will be recalled that the convention of 1903 was drafted at a time when the

Panama Canal was only a dream and that consequently it was impossible to foresee and to provide for the many varied phases of our relations with Panama which would spring from the continuous operation of the Canal and its attendant works and establishments.

"Dissatisfaction on the part of the Republic of Panama with certain of the provisions of the convention of 1903 arose early, and various attempts were made, many of them successful, to solve certain specific problems either informally or by agreement. The present General Treaty is the result of many painstaking hours of negotiation and preparation. It is a document which we hope responds to the genuine and legitimate aspirations of the Government and people of Panama yet which not only continues existing safeguards and provisions for the operation, maintenance, sanitation, and protection of the Canal from our point of view, but by associating the Republic of Panama in this work, accords even greater security and efficiency to the Canal, either in its present form or should it become necessary, in an expanded form."

(Treaty Series, No. 945.)

APPLICATION TO THE PRESENT CASE

Inasmuch as State K has the same rights in the Canal Zone leased from State L as those possessed by the United States in the Panama Canal Zone, State K, though not possessing title to the zone, has all the authority which it would have if it were the true sovereign. State K as a neutral is therefore responsible for what transpires in the zone and must uphold the obligations of a neutral under international law. The *Vigo,* a belligerent cruiser, had no right to send the airplane *V-1,* a military craft, into neutral territory and the *V–1* should have been interned by State K authorities. Not only was the initial entry of the *V–1* a violation of the neutrality of State K, but also its departure was an illegal act which State K should have used

the means at its disposal to prevent. The *V–1,* equipped for war and capable of engaging in hostile action, constituted an expedition. Transportation of the naval attaché of the legation of the belligerent State V who had important information to transmit to the commander of the *Vigo,* rendered the action all the more culpable. The territory of State K was being used as a base both by the departure of a plane ready for war use and by the sending of a special messenger conveying military communications to the commander of a belligerent warship at sea.

It is true that the attaché enjoys full diplomatic immunities and it is also true that State K is under no obligation to prevent couriers from carrying messages to a foreign government, but this last statement refers to regular diplomatic correspondence and not to directing operations of ships at sea. The attaché is not permitted under international law to engage in activities which involve violations of the neutrality of the state to which he is accredited. Had the *Vigo* come into a canal port, the attaché could legally have gone on board if he had so desired, but flying out to a warship of his nation is an entirely different matter and one that very definitely turns the territory of the zone into a belligerent base of operations. If the *Vigo* had been in distress, it could have come into port itself or else it could have radioed to those on shore for help and needed supplies. The authorities of neutral State K are bound to succor and relieve the distress, if genuine, of vessels at sea and might have sent out one of their own planes or ships to render aid. Officials of State K, however, must in no way implement the fighting capacity of the *Vigo*

and must draw the line very carefully between aid to a ship in distress and permitting a belligerent warship to increase its fighting ability. In this situation, therefore, State K must not countenance the flight of a belligerent naval airplane into its jurisdiction and is under an obligation to prevent such craft and important messages from being transmitted to a belligerent fleet off its coast. The tactics of the *Vigo,* the *V–1* and the naval attaché are gravely suspect. The needed medical supplies could have been obtained in ways which did not involve the neutrality rights and obligations of State K in the Canal Zone.

RÉSUMÉ

The principle of contiguous zones appears to have been established in international law, but no consensus exists as to what the widths of such areas, especially those for defense purposes, ought to be. The Declaration of Panama which asserted jurisdiction for purposes of neutrality patrol over parts of the sea to a distance 300 miles from the shore is not binding in international law, though the proclamation may well have been justified for political or other reasons. In regard to the status of the British Dominions, an era of academic questionings came to an end when the Irish Free State declared its neutrality on September 3, 1939, and was regarded as a neutral by all the belligerents. It has been proved that the British Dominions *can* be neutral because one of them actually has been neutral. Concerning other aspects of neutrality the introduction of the airplane has resulted in the making of some new rules and in the adaptation of

some of the former ones, to a new instrument of warfare. Belligerent military airplanes, unlike belligerent surface craft, are barred entirely from neutral jurisdiction. The actual practice of states in the last war led to the creation of this new prohibition. When it come to the departure of planes from neutral jurisdiction, the rules in regard to "fitting out and arming" have been taken over and applied to aircraft. Neutrals must use the means at their disposal to keep planes from leaving which are in a condition to take part in a military operation.

SOLUTION

(*a*) The commander of the *Komlo* should act to protect the *Vera,* thus conforming to the domestic law of his own state. The legality of the protective zone under international law depends upon its acceptance by other powers. In this instance, therefore, the protective zone is not recognized by international law and State U may attempt to hold State K internationally responsible.

(*b*) It is legally possible for Vinta to be a neutral state. If the Dominion of Vinta is recognized as a neutral by the belligerents, the *Vincent* may remain in the canal ports indefinitely.

(*c*) The *V–1* has no right to enter neutral jurisdiction and the authorities of State K in the Canal Zone should have used the means at their disposal to prevent the departure of *V–1.*

(*d*) States L, U, and V are not obliged to recognize the zone and their protests are legally valid.

APPENDIXES

APPENDIXES

I. Neutrality Law of May 1, 1937.

(Adopted by Congress, April 29, 1937, Public Resolution No. 27, 75th Congress, Chapter 146, 1st Session, S. J. Res. 51. Act printed entire except for Section 5 on the National Munitions Control Board and Sections 12, 13, 14, and 15.)

EXPORT OF ARMS, AMMUNITION, AND IMPLEMENTS OF WAR

SECTION 1. (a) Whenever the President shall find that there exists a state of war between, or among, two or more foreign States, the President shall proclaim such fact, and it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from any place in the United States to any belligerent State named in such proclamation, or to any neutral State for transshipment to, or for the use of, any such belligerent State.

(b) The President shall, from time to time, by proclamation extend such embargo upon the export of arms, ammunition, or implements of war to other States as and when they may become involved in such war.

(c) Whenever the President shall find that a state of civil strife exists in a foreign State and that such civil strife is of a magnitude or is being conducted under such conditions that the export of arms, ammunition, or implements of war from the United States to such foreign State would threaten or endanger the peace of the United States, the President shall proclaim such fact, and it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from any place in the United States to such foreign State, or to any neutral State for transshipment to, or for the use of, such foreign State.

(d) The President shall, from time to time by proclamation, definitely enumerate the arms, ammunition, and imple-

ments of war, the export of which is prohibited by this section. The arms, ammunition, and implements of war so enumerated shall include those enumerated in the President's proclamation numbered 2163, of April 10, 1936, but shall not include raw materials or any other articles or materials not of the same general character as those enumerated in the said proclamation, and in the Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War, signed at Geneva, June 17, 1925.

(e) Whoever, in violation of any of the provisions of this Act, shall export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from the United States shall be fined not more than $10,000, or imprisoned not more than five years, or both, and the property, vessel, or vehicle containing the same shall be subject to the provisions of sections 1 to 8, inclusive, title 6, chapter 30, of the Act approved June 15, 1917 (40 Stat. 223–225; U. S. C., 1934 ed., title 22, secs. 238–245).

(f) In the case of the forfeiture of any arms, ammunition, or implements of war by reason of a violation of this Act, no public or private sale shall be required; but such arms, ammunition, or implements of war shall be delivered to the Secretary of War for such use or disposal thereof as shall be approved by the President of the United States.

(g) Whenever, in the judgment of the President, the conditions which have caused him to issue any proclamation under the authority of this section have ceased to exist, he shall revoke the same, and the provisions of this section shall thereupon cease to apply with respect to the State or States named in such proclamation, except with respect to offenses committed, or forfeitures incurred, prior to such revocation.

EXPORT OF OTHER ARTICLES AND MATERIALS

SEC. 2. (a) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act and he shall thereafter find that the placing of restrictions on the shipment of certain articles or materials in addition to arms, ammunition, and implements of war from the United States, to belligerent States, or to a State wherein civil

strife exists, is necessary to promote the security or preserve the peace of the United States or to protect the lives of citizens of the United States, he shall so proclaim, and it shall thereafter be unlawful, except under such limitations and exceptions as the President may prescribe as to lakes, rivers, and inland waters bordering on the United States, and as to transportation on or over lands bordering on the United States, for any American vessel to carry such articles or materials to any belligerent State, or to any State wherein civil strife exists, named in such proclamation issued under the authority of section 1 of this Act, or to any neutral State for transshipment to, or for the use of, any such belligerent State or any such State wherein civil strife exists. The President shall by proclamation from time to time definitely enumerate the articles and materials which it shall be unlawful for American vessels to so transport.

(b) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act and he shall thereafter find that the placing of restrictions on the export of articles or materials from the United States to belligerent States, or to a State wherein civil strife exists, is necessary to promote the security or preserve the peace of the United States or to protect the lives or commerce of citizens of the United States, he shall so proclaim, and it shall thereafter be unlawful, except under such limitations and exceptions as the President may prescribe as to lakes, rivers, and inland waters bordering on the United States, and as to transportation on or over land bordering on the United States, to export or transport, or attempt to export or transport or cause to be exported or transported, from the United States to any belligerent State, or to any State wherein civil strife exists, named in such proclamation issued under the authority of section 1 of this Act, or to any neutral State for transshipment to, or for the use of, any such belligerent State or any such State wherein civil strife exists, any articles or materials whatever until all right, title, and interest therein shall have been transferred to some foreign government, agency, institution, association, partnership, corporation, or national. The shipper of such articles or materials shall be required to file with the collector of the port from

which they are to be exported a declaration under oath that there exists in citizens of the United States no right, title, or interest in such articles or materials, or to comply with such rules and regulations as shall be promulgated from time to time by the President. Any such declaration so filed shall be a conclusive estoppel against any claim of any citizen of the United States of right, title, or interest in such articles or materials. Insurance written by underwriters on any articles or materials the export of which is prohibited by this Act, or on articles or materials carried by an American vessel in violation of subsection (a) of this section, shall not be deemed an American interest therein, and no insurance policy issued on such articles or materials and no loss incurred thereunder or by the owner of the vessel carrying the same shall be made a basis of any claim put forward by the Government of the United States.

(c) The President shall from time to time by proclamation extend such restrictions as are imposed under the authority of this section to other States as and when they may be declared to become belligerent States under proclamations issued under the authority of section 1 of this Act.

(d) The President may from time to time change, modify, or revoke in whole or in part any proclamations issued by him under the authority of this section.

(e) Except with respect to offenses committed, or forfeitures incurred, prior to May 1, 1939, this section and all proclamations issued thereunder shall not be effective after May 1, 1939.

FINANCIAL TRANSACTIONS

SEC. 3. (a) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act, it shall thereafter be unlawful for any person within the United States to purchase, sell, or exchange bonds, securities, or other obligations of the government of any belligerent State or of any State wherein civil strife exists, named in such proclamation, or of any political subdivision of any such State, or of any person acting for or on behalf of the government of any such State, or of any faction or asserted government within any such State wherein civil strife exists,

or of any person acting for or on behalf of any faction or asserted government within any such State wherein civil strife exists, issued after the date of such proclamation, or to make any loan or extend any credit to any such government, political subdivision, faction, asserted government, or person, or to solicit or receive any contribution for any such government, political subdivision, faction, asserted government, or person: *Provided*, That if the President shall find that such action will serve to protect the commerical or other interests of the United States or its citizens, he may, in his discretion, and to such extent and under such regulations as he may prescribe, except from the operation of this section ordinary commercial credits and short-time obligations in aid of legal transactions and of a character customarily used in normal peacetime commercial transactions. Nothing in this subsection shall be construed to prohibit the solicitation or collection of funds to be used for medical aid and assistance, or for food and clothing to relieve human suffering, when such solicitation or collection of funds is made on behalf of and for use by any person or organization which is not acting for or on behalf of any such government, political subdivision, faction, or asserted government, but all such solicitations and collections of funds shall be subject to the approval of the President and shall be made under such rules and regulations as he shall prescribe.

(b) The provisions of this section shall not apply to a renewal or adjustment of such indebtedness as may exist on the date of the President's proclamation.

(c) Whoever shall violate the provisions of this section or of any regulations issued hereunder shall, upon conviction thereof, be fined not more than $50,000 or imprisoned for not more than five years, or both. Should the violation be by a corporation, organization, or association, each officer or agent thereof participating in the violation may be liable to the penalty herein prescribed.

(d) Whenever the President shall have revoked any such proclamation issued under the authority of section 1 of this Act, the provisions of this section and of any regulations issued by the President hereunder shall thereupon cease to

apply with respect to the State or States named in such proclamation, except with respect to offenses committed prior to such revocation.

EXCEPTIONS—AMERICAN REPUBLICS

SEC. 4. This Act shall not apply to an American republic or republics engaged in war against a non-American State or States, provided the American republic is not cooperating with a non-American State or States in such war.

AMERICAN VESSELS PROHIBITED FROM CARRYING ARMS TO BELLIGERENT STATES

SEC. 6. (a) Whenever the President shall have issued a proclamation under the authority of section I of this Act, it shall thereafter be unlawful, until such proclamation is revoked, for any American vessel to carry any arms, ammunition, or implements of war to any belligerent State, or to any State wherein civil strife exists, named in such proclamation, or to any neutral State for transshipment to, or for the use of, any such belligerent State or any such State wherein civil strife exists.

(b) Whoever, in violation of the provisions of this section, shall take, or attempt to take, or shall authorize, hire, or solicit another to take, any American vessel carrying such cargo out of port or from the jurisdiction of the United States shall be fined not more than $10,000, or imprisoned not more than five years, or both; and in addition, such vessel, and her tackle, apparel, furniture, and equipment, and the arms, ammunition, and implements of war on board, shall be forfeited to the United States.

USE OF AMERICAN PORTS AS BASE OF SUPPLY

SEC. 7. (a) Whenever, during any war in which the United States is neutral, the President, or any person thereunto authorized by him, shall have cause to believe that any vessel, domestic or foreign, whether requiring clearance or not, is about to carry out of a port of the United States, fuel, men, arms, ammunition, implements of war, or other supplies to any warship, tender, or supply ship of a belligerent State, but the evidence is not deemed sufficient to justify forbidding the

departure of the vessel as provided for by section I, title V, chapter 30, of the Act approved June 15, 1917 (40 Stat. 217, 221; U. S. C., 1934 ed., title 18, sec. 31), and if, in the President's judgment, such action will serve to maintain peace between the United States and foreign States, or to protect the commercial interests of the United States and its citizens, or to promote the security or neutrality of the United States, he shall have the power and it shall be his duty to require the owner, master, or person in command thereof, before departing from a port of the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that the vessel will not deliver the men, or any part of the cargo, to any warship, tender, or supply ship of a belligerent State.

(b) If the President, or any person thereunto authorized by him, shall find that a vessel, domestic or foreign, in a port of the United States, has previously cleared from a port of the United States during such war and delivered its cargo or any part thereof to a warship, tender, or supply ship of a belligerent State, he may prohibit the departure of such vessel during the duration of the war.

SUBMARINES AND ARMED MERCHANT VESSELS

SEC. 8. Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign State, will serve to maintain peace between the United States and foreign States, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, and shall make proclamation thereof, it shall thereafter be unlawful for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. Whenever, in his judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply.

TRAVEL ON VESSELS OF BELLIGERENT STATES

SEC. 9. Whenever the President shall have issued a proclamation under the authority of section 1 of this Act it shall thereafter be unlawful for any citizen of the United States to travel on any vessel of the State or States named in such proclamation, except in accordance with such rules and regulations as the President shall prescribe: *Provided, however*, That the provisions of this section shall not apply to a citizen of the United States traveling on a vessel whose voyage was begun in advance of the date of the President's proclamation, and who had no opportunity to discontinue his voyage after that date: *And provided further*, That they shall not apply under ninety days after the date of the President's proclamation to a citizen of the United States returning from a foreign State to the United States. Whenever, in the President's judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply with respect to the State or States named in such proclamation, except with respect to offenses committed prior to such revocation.

ARMING OF AMERICAN MERCHANT VESSELS PROHIBITED

SEC. 10. Whenever the President shall have issued a proclamation under the authority of section 1, it shall thereafter be unlawful, until such proclamation is revoked, for any American vessel engaged in commerce with any belligerent State, or any State wherein civil strife exists, named in such proclamation, to be armed or to carry any armament, arms, ammunition, or implements of war, except small arms and ammunition therefor which the President may deem necessary and shall publicly designate for the preservation of discipline aboard such vessels.

REGULATIONS

SEC. 11. The President may, from time to time, promulgate such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out any of the provisions of this Act; and he may exercise any power

or authority conferred on him by this Act through such officer or officers, or agency or agencies, as he shall direct.

II. Neutrality Act of November 4, 1939.

(Public Resolution No. 54, 76th Cong., 2d sess.)

Whereas the United States, desiring to preserve its neutrality in wars between foreign states and desiring also to avoid involvement therein, voluntarily imposes upon its nationals by domestic legislation the restrictions set out in this joint resolution; and

Whereas by so doing the United States waives none of its own rights or privileges, or those of any of its nationals, under international law, and expressly reserves all the rights and privileges to which it and its nationals are entitled under the law of nations; and

Whereas the United States hereby expressly reserves the right to repeal, change, or modify this joint resolution or any other domestic legislation in the interests of the peace, security, or welfare of the United States and its people: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

PROCLAMATION OF A STATE OF WAR BETWEEN FOREIGN STATES

SECTION 1. (a) That whenever the President, or the Congress by concurrent resolution shall find that there exists a state of war between foreign states, and that it is necessary to promote the security or preserve the peace of the United States or to protect the lives of citizens of the United States, the President shall issue a proclamation naming the states involved; and he shall, from time to time, by proclamation, name other states as and when they may become involved in the war.

(b) Whenever the state of war which shall have caused the President to issue any proclamation under the authority of this section shall have ceased to exist with respect to any state named in such proclamation, he shall revoke such proclamation with respect to such state.

COMMERCE WITH STATES ENGAGED IN ARMED CONFLICT

SEC. 2. (a) Whenever the President shall have issued a proclamation under the authority of section 1 (a) it shall thereafter be unlawful for any American vessel to carry any passengers or any articles or materials to any state named in such proclamation.

(b) Whoever shall violate any of the provisions of subsection (a) of this section or of any regulations issued thereunder shall, upon conviction thereof, be fined not more than $50,000 or imprisoned for not more than five years, or both. Should the violation be by a corporation, organization, or association, each officer or director thereof participating in the violation shall be liable to the penalty herein prescribed.

(c) Whenever the President shall have issued a proclamation under the authority of Section 1 (a) it shall thereafter be unlawful to export or transport, or attempt to export or transport, or cause to be exported or transported, from the United States to any State named in such proclamation, any articles or materials (except copyright articles or materials) until all right, title and interest therein shall have been transferred to some foreign government, agency, institution, association, partnership, corporation, or national.

Issuance of a bill of lading under which title to the goods shipped passes to the purchaser unconditionally upon delivery of the goods to carrier, shall constitute a transfer of all right, title, and interest therein within the meaning of this subsection. The shipper of such articles or materials shall be required to file with the collector of the port from or through which they are to be exported a declaration under oath that he has complied with the requirements of this subsection with respect to transfer of right, title, and interest in such articles or materials and that he will comply with such rules and regulations as shall be promulgated from time to time. Any such declaration so filed shall be a conclusive estoppel against any claim of any citizen of the United States having knowledge of such shipment or of such declaration of right, title, or interest in such articles or materials. No loss incurred by any such citizen (1) in connection with the sale or transfer of right, title, and interest

in any such articles or materials or (2) in connection with the exportation or transportation of any such copyrighted articles or materials, shall be made the basis of any claim put forward by the Government of the United States.

(d) Insurance written by underwriters on articles or materials included in shipments which are subject to restrictions under the provisions of this joint resolution, and on vessels carrying such shipments, shall not be deemed an American interest therein, and no insurance policy issued on such articles or materials, or vessels, and no loss incurred thereunder or by the owners of such vessels, shall be made the basis of any claim put forward by the Government of the United States.

(e) Whenever any proclamation issued under the neutrality of Section 1 (a) shall have been revoked with respect to any State the provisions of this section shall thereupon cease to apply with respect to such State, except as to offenses committed prior to such revocation.

(f) The provisions of subsection (a) of this section shall not apply to transportation by American vessels on or over lakes, rivers and inland waters bordering on the United States, or to transportation by aircraft on or over lands bordering on the United States; and the provisions of subsection (c) of this section shall not apply (1) to such transportation of any articles or materials other than articles listed in a proclamation issued under the authority of Section 12 (i) or to any other transportation on or over lands bordering on the United States of any articles or materials other than articles listed in a proclamation issued under the authority of Section 12 (i). And the provisions of subsections (a) and (c) of this section shall not apply to the transportation referred to in this subsection and subsections (g) and (h) of any articles or materials listed in a proclamation issued under the authority of Section 12 (i) if the articles or materials so listed are to be used exclusively by American vessels, aircraft, or other vehicles in connection with their operation and maintenance.

(g) The provisions of subsections (a) and (c) of this section shall not apply to transportation by American vessels (other than aircraft) of mail, passengers, or any articles or

materials (except articles or materials listed in a proclamation issued under the authority of section 12 (i) (1) to any port in the Western Hemisphere north of thirty-five degrees north latitude, (2) to any port in the Western Hemisphere north of thirty-five degrees north latitude and west of sixty-six degrees west longitude, (3) to any port on the Pacific or Indian Oceans, including the China Sea, the Tasman Sea, the Bay of Bengal and the Arabian Sea and any other dependent waters of either of such oceans, seas or bays, or (4) to any port on the Atlantic Ocean or its dependent waters south of thirty degrees north latitude. The exceptions contained in this subsection shall not apply to any such port which is included within a combat area as defined in section 3, which applies to such vessels.

(h) The provisions of subsections (a) and (c) of this section shall not apply to transportation by aircraft of mail, passengers or any articles or materials (except articles or materials listed in a proclamation issued under the authority of section 12 (i) (1) to any port in the Western Hemisphere, or (2) to any port on the Pacific or Indian Oceans, including the China Sea, the Tasman Sea, the Bay of Bengal and the Arabian Sea and any other dependent waters of either such oceans, seas or bays. The exceptions contained in this subsection shall not apply to any such port which is included within a combat area as defined in section 3, which applies to such aircraft.

(i) Every American vessel to which the provisions of subsections (g) and (h) apply and every neutral vessel to which the provisions of subsection (i) apply shall, before departing from a port of the United States, file with the collector of customs of the port of departure, or if there is no such collector at such port, then with the nearest collector of customs, a sworn statement (1) containing a complete list of all the articles and materials carried as cargo by such vessel, and the names and addresses of the consignees of all such articles and materials, and (2) stating the ports at which such articles and materials are to be unloaded and the ports of call of such vessel. All transportation referred to in subsections (f), (g), (h) and (i) of this section shall be subject to such restrictions, rules and regulations as the

President shall prescribe; but no loss incurred in connection with any transportation excepted under the provisions of subsections (g), (h) and (i) of this section shall be made the basis of any claim put forward by the Government of the United States.

(j) Whenever all proclamations issued under the authority of section 1 (a) shall have been revoked, the provisions of subsections (f), (g), (h) and (i) shall expire.

(k) The provisions of this section shall not apply to the current voyage of any American vessel which has cleared for a foreign port and has departed from a port or from the jurisdiction of the United States in advance of (1) the date of enactment of this joint resolution, or (2) any proclamation issued after such date under the authority of Section 1 (a) of this Joint Resolution; but any such vessel shall proceed at its own risk after either of such dates, and no loss incurred in connection with any such vessel or its cargo after either of such dates shall be made the basis of any claim put forward by the Government of the United States.

(1) The provisions of subsection (c) of this section shall not apply to the transportation by a neutral vessel to any port referred to in subsection (g) of this section of any articles or materials [except articles or materials listed in a proclamation referred to in it or issued under the authority of Section 12 (i)] so long as such port is not included within a combat area as defined in Section 3 which applies to American vessels.

COMBAT AREAS

SECTION 3. (a) Whenever the President shall have issued a proclamation under the authority of 1 (a), and he shall thereafter find that the protection of citizens of the United States so requires, he shall, by proclamation, define combat areas, and thereafter it shall be unlawful, except under such rules and regulations as may be prescribed, for any citizen of the United States or any American vessel to proceed into or through any such combat area. The combat areas so defined may be made to apply to surface vessels or aircraft, or both.

(b) In case of the violation of any of the provisions of this section by any American vessel, or any owner or officer thereof, such vessel, owner or officer shall be fined not more than $50,000 or imprisoned for not more than five years, or both. Should the owner of such vessel be a corporation, organization or association, each officer or director participating in the violation shall be liable to the penalty hereinabove prescribed. In case of the violation of this section by a citizen traveling as a passenger, such passenger may be fined not more than $10,000 or imprisoned for not more than two years, or both.

(c) The President may from time to time modify or extend any proclamation issued under the authority of this section, and when the conditions which shall have caused him to issue any such proclamation shall have ceased to exist he shall revoke such proclamation and the provisions of this section shall thereupon cease to apply, except as to offenses committed prior to such revocation.

AMERICAN RED CROSS

SEC. 4. The provisions of Section 2 (a) shall not prohibit the transportation by vessels under charter or other direction and control of the American Red Cross, proceeding under safe conduct granted by states named in any proclamation issued under the authority of Section 1 (a), of officers and American Red Cross personnel, medical personnel, and medical supplies, food, and clothing, for the relief of human suffering.

TRAVEL ON VESSELS OF BELLIGERENT STATES

SEC. 5. (a) Whenever the President shall have issued a proclamation under the authority of Section 1 (a) it shall thereafter be unlawful for any citizen of the United States to travel on any vessel of any state named in such proclamation, except in accordance with such rules and regulations as may be prescribed.

(b) Whenever any proclamation issued under the authority of Section 1 (a) shall have been revoked with respect to any state the provisions of this section shall thereupon cease

to apply with respect to such state, except as to offenses committed prior to such revocation.

ARMING OF AMERICAN MERCHANT VESSELS PROHIBITED

SEC. 6. Whenever the President shall have issued a proclamation under the authority of Section 1 (a), it shall thereafter be unlawful until such proclamation is revoked, for any American vessel, engaged in commerce with any foreign state to be armed, except with small arms and ammunition therefor, which the President may deem necessary and shall publicly designate for the preservation of discipline aboard any such vessel.

FINANCIAL TRANSACTIONS

SEC. 7. (a) Whenever the President shall have issued a proclamation under the authority of Section 1 (a), it shall thereafter be unlawful for any person within the United States to purchase, sell, or exchange bonds, securities, or other obligations of the government of any State named in such proclamation, or of any political subdivision of any such State, or of any person acting for or on behalf of the government of any such State or political subdivision thereof, issued after the date of such proclamation, or to make any loan or extend any credit (other than necessary credits accruing in connection with the transmission of telegraph, cable, wireless and telephone services) to any such government, political subdivision, or person. The provisions of this subsection shall also apply to the sale by any person within the United States to any person in a State named in any such proclamation of any articles or materials listed in a proclamation issued under the authority of Section 12 (1).

(b) The provisions of this section shall not apply to a renewal or adjustment of such indebtedness as may exist on the date of such proclamation.

(c) Whoever shall knowingly violate any of the provisions of this section or of any regulations issued thereunder shall, upon conviction thereof, be fined not more than $50,000 or imprisoned for not more than five years, or

both. Should the violation be by a corporation, organization, or association, each officer or director thereof participating in the violation shall be liable to the penalty herein prescribed.

(d) Whenever any proclamation issued under the authority of Section 1 (a) shall have been revoked with respect to any State the provisions of this section shall thereupon cease to apply with respect to such State, except as to offenses committed prior to such revocation.

SOLICITATION AND COLLECTION OF FUNDS AND CONTRIBUTIONS

SEC. 8 (a) Whenever the President shall have issued a proclamation under the authority of Section 1 (a), it shall thereafter be unlawful for any person within the United States to solicit or receive any contribution for or on behalf of the government of any State named in such proclamation or for or on behalf of any agent or instrumentality of any such State.

(b) Nothing in this section shall be construed to prohibit the solicitation or collection of funds and contributions to be used for medical aid and assistance, or for food and clothing to relieve human suffering, when such solicitation or collection of funds and contributions is made on behalf of and for use by any person or organization which is not acting for or on behalf of any such government, but all such solicitations and collections of funds and contributions shall be in accordance with and subject to such rules and regulations as may be prescribed.

(c) Whenever any proclamation issued under the authority of Section 1 (a) shall have been revoked with respect to any State the provisions of this section shall thereupon cease to apply with respect to such State, except as to offenses committed prior to such revocation.

AMERICAN REPUBLICS

SEC. 9. This joint resolution except Section 12 shall not apply to any American republic engaged in war against a non-American State or States, provided the American republic is not cooperating with a non-American State or States in such war.

RESTRICTIONS ON USE OF AMERICAN PORTS

SEC. 10. (a) Whenever, during any war in which the United States is neutral, the President, or any person thereunto authorized by him, shall have cause to believe that any vessel, domestic or foreign, whether requiring clearance or not, is about to carry out of a port or from the jurisdiction of the United States, fuel, men, arms, ammunition, implements of war, supplies, dispatches, or information to any warship, tender, or supply ship of a state named in a proclamation issued under the authority of section 1 (a), but the evidence is not deemed sufficient to justify forbidding the departure of the vessel as provided for by section 1, title V, chapter 30, of the Act approved June 15, 1917 (40 Stat. 217, 221; U. S. C., 1934 edition, title 18, sec. 31), and if, in the President's judgment, such action will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security or neutrality of the United States, he shall have the power, and it shall be his duty, to require the owner, master, or person in command thereof, before departing from a port or from the jurisdiction of the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that the vessel will not deliver the men, or any fuel, supplies, dispatches, information, or any part of the cargo, to any warship, tender, or supply ship of a state named in a proclamation issued under the authority of section 1 (a).

(b) If the President, or any person thereunto authorized by him, shall find that a vessel, domestic or foreign, in a port of the United States, has previously departed from a port or from the jurisdiction of the United States during such war and delivered men, fuel, supplies, dispatches, information, or any part of its cargo to a warship, tender, or supply ship of a state named in a proclamation issued under the authority of section 1 (a), he may prohibit the departure of such vessel during the duration of the war.

(c) Whenever the President shall have isued a proclamation under section 1 (a) he may, while such proclamation is in effect, require the owner, master, or person in command of any vessel, foreign or domestic, before departing from the

United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that no alien seaman who arrived on such vessel shall remain in the United States for a longer period than that permitted under the regulations, as amended from time to time, issued pursuant to section 33 of the Immigration Act of February 5, 1917 (U. S. C., title 8, sec. 168). Notwithstanding the provisions of said section 33, the President may issue such regulations with respect to the landing of such seamen as he deems necessary to insure their departure either on such vessel or another vessel at the expense of such owner, master, or person in command.

SUBMARINES AND ARMED MERCHANT VESSELS

SECTION 11. Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign State will serve to maintain peace between the United States and foreign States, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, and shall make proclamation thereof, it shall thereafter be unlawful for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. Whenever, in his judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply, except as to offenses committed prior to such revocation.

NATIONAL MUNITIONS CONTROL BOARD

SEC. 12 (a) There is hereby established a National Munitions Control Board (hereinafter referred to as the "board"). The board shall consist of the Secretary of State, who shall be chairman and executive officer of the board; the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy and the Secretary of Commerce.

Except as otherwise provided in this section, or by other law, the administration of this section is vested in the Secretary of State. The Secretary of State shall promulgate such rules and regulations with regard to the enforcement of this section as he may deem necessary to carry out its provisions. The board shall be convened by the chairman and shall hold at least one meeting a year.

(b) Every person who engages in the business of manufacturing, exporting or importing any arms, ammunition or implements of war listed in a proclamation issued under authority of subsection (1) of this section, whether as an exporter, importer, manufacturer or dealer, shall register with the Secretary of State his name, or business name, principal place of business and places of business in the United States, and a list of the arms, ammunition and implements of war which he manufactures, imports or exports.

(c) Every person required to register under this section shall notify the Secretary of State of any change in the arms, ammunition, or implements of war which he exports, imports, or manufactures; and upon such notification the Secretary of State shall issue to such person an amended certificate of registration, free of charge, which shall remain valid until the date of expiration of the original certificate. Every person required to register under the provisions of this section shall pay a registration fee of $100. Upon receipt of the required registration fee the Secretary of State shall issue a registration certificate valid for five years, which shall be renewable for further periods of five years upon the payment for each renewal of a fee of $100.

(d) It shall be unlawful for any person to export, or attempt to export, from the United States to any other State, any arms, ammunition, or implements of war listed in a proclamation issued under the authority of subsection (i) of this section, or to import, or attempt to import, to the United States from any other State, any of the arms, ammunition, or implements of war listed in any such proclamation, without first having submitted to the Secretary of State the name of the purchaser and the terms of sale and having obtained a license therefor.

(e) All persons required to register under this section shall maintain, subject to the inspection of the Secretary of State,

or any person or persons designated by him, such permanent records of manufacture for export, importation, and exportation of arms, ammunition, and implements of war as the Secretary of State shall prescribe.

(f) Licenses shall be issued by the Secretary of State to persons who have registered as herein provided for, except in cases of export or import licenses where the export of arms, ammunition, or implements of war would be in violation of this joint resolution or any other law of the United States, or of a treaty to which the United States is a party, in which cases such licenses shall not be issued.

(g) No purchase of arms, ammunition, or implements of war shall be made on behalf of the United States by any officer, executive department, or independent establishment of the government from any person who shall have failed to register under the provisions of this joint resolution.

(h) The board shall make a report to Congress on January 1 and July 1 of each year, copies of which shall be distributed as are other reports transmitted to Congress. Such report shall contain such information and data collected by the board as may be considered of value in the determination of questions connected with the control of trade in arms, ammunition, and implements of war, including the name of the purchaser and the terms of sale made under such license. The board shall include in such reports a list of all persons required to register under the provisions of this joint resolution, and full information concerning the licenses issued hereunder, including the name of the purchaser and the terms of sale made under such license.

(i) The President is hereby authorized to proclaim upon recommendation of the board from time to time a list of articles which shall be considered arms, ammunition, and implements of war for the purposes of this section.

REGULATIONS

SEC. 13. The President may, from time to time, promulgate such rules and regulations, not inconsistent with law, as may be necesary and proper to carry out any of the provisions of this joint resolution; and he may exercise any power or

authority conferred on him by this joint resolution through such officer or officers, or agency or agencies, as he shall direct.

UNLAWFUL USE OF THE AMERICAN FLAG

SEC. 14 (a). It will be unlawful for any vessel belonging to or operating under the jurisdiction of any foregin State to use the flag of the United States thereon, to make use of any distinctive signs or markings, indicating that the same is an American vessel.

(b) Any vessel violating the provisions of subsection (a) of this section shall be denied for a period of three months the right to enter the ports or territorial waters of the United States except in case of force majeure.

GENERAL PENALTY PROVISION

SEC. 15. In every case of the violation of any of the provisions of this joint resolution or of any rule or regulation issued pursuant thereto where a specific penalty is not herein provided, such violator or violators, upon conviction, shall be fined not more than $10,000, or imprisoned not more than two years, or both.

DEFINITIONS

SEC. 16. For the purpose of this joint resolution—(a) the term "United States" when used in a geographical sense, includes the several States and territories, the insular possessions of the United States (including the Philippine Islands), the Canal Zone, and the District of Columbia.

(b) The term "person" includes a partnership, company, association, or corporation, as well as a natural person.

(c) The term "vessel" means every description of water craft and aircraft capable of being used as a means of transportation on, under, or over water.

(d) The term "American vessel" means any vessel documented, and any aircraft registered or licensed, under the laws of the United States.

(e) The term "State" shall include nation, government, and country.

(f) The term "citizen" shall include any individual owing allegiance to the United States, a partnership, company, or

association composed in whole or in part of citizens of the United States, and any corporation organized and existing under the laws of the United States as defined in subsection (a) of this section.

SEPARABILITY OF PROVISIONS

SEC. 17. If any of the provisions of this joint resolution, or the application thereof to any person or circumstance, is held invalid, the remainder of the joint resolution, and the application of such provision to other persons or circumstances, shall not be affected thereby.

APPROPRIATIONS

SEC. 18. There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and accomplish the purposes of this joint resolution.

REPEALS

SEC. 19. The joint resolution of Aug. 31, 1935, as amended, and the joint resolution of Jan. 8, 1937, are hereby repealed, provided that such repeal shall not affect the validity of certificates of registration or licenses issued pursuant to Section 2 of the joint resolution of Aug. 31, 1935, or Section 5 of the joint resolution of Aug. 31, 1935, as amended, or the validity of proclamation No. 2237 of May 1, 1937 (50 Stat. 1834), defining the term "arms, ammunition and implements of war," which, until it is revoked, shall have full force and effect as if issued pursuant to this joint resolution: *Provided further*, That offenses committed and penalties, forfeitures or liabilities incurred under either of such joint resolutions prior to the date of enactment of this joint resolution may be prosecuted and punished, and suits and proceedings for violations of either of such joint resolutions or of any rule or regulation issued pursuant thereto may be commenced and prosecuted, in the same manner and with the same effect as if such joint resolutions had not been repealed.

SHORT TITLE

SEC. 20. This joint resolution may be cited as the "Neutrality Act of 1939."

III. Proclamation of neutrality (general) by the President, September 5, 1939.

(4 Federal Register, p. 3809.)

WHEREAS a state of war unhappily exists between Germany and France; Poland; and the United Kingdom, India, Australia and New Zealand;

AND WHEREAS the United States is on terms of friendship and amity with the contending powers; and with the persons inhabiting their several dominions;

AND WHEREAS there are nationals of the United States residing within the territories or dominions of each of the said belligerents, and carrying on commerce, trade, or other business or pursuits therein;

AND WHEREAS there are nationals of each of the said belligerents residing within the territory or jurisdiction of the United States, and carrying on commerce, trade, or other business or pursuits therein;

AND WHEREAS the laws and treaties of the United States, without interfering with the free expression of opinion and sympathy, nevertheless impose upon all persons who may be within their territory and jurisdiction the duty of an impartial neutrality during the existence of the contest;

AND WHEREAS it is the duty of a neutral government not to permit or suffer the making of its territory or territorial waters subservient to the purposes of war;

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, in order to preserve the neutrality of the United States and of its citizens and of persons within its territory and jurisdiction, and to enforce its laws and treaties, and in order that all persons, being warned of the general tenor of the laws and treaties of the United States in this behalf, and of the law of nations, may thus be prevented from any violation of the same, do hereby declare and proclaim that by certain provisions of the act approved on the 4th day of March, A. D.

1909, commonly known as the "Penal Code of the United States" and of the act approved on the 15th day of June, A. D. 1917, the following acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to wit:

1. Accepting and exercising a commission to serve one of the said belligerents by land or by sea against an opposing belligerent.

2. Enlisting or entering into the service of a belligerent as a soldier, or as a marine, or seaman on board of any ship of war, letter of marque, or privateer.

3. Hiring or retaining another person to enlist or enter himself in the service of a belligerent as a soldier, or as a marine, or seaman on board of any ship of war, letter of marque, or privateer.

4. Hiring another person to go beyond the limits or jurisdiction of the United States with intent to be enlisted as aforesaid.

5. Hiring another person to go beyond the limits or jurisdiction of the United States with intent to be entered into service as aforesaid.

6. Retaining another person to go beyond the limits or jurisdiction of the United States to be enlisted as aforesaid.

7. Retaining another person to go beyond the limits or jurisdiction of the United States with intent to be entered into service as aforesaid. (But the said act of the 4th day of March, A. D. 1909, as amended by the act of the 15th day of June, A. D. 1917, is not to be construed to extend to a citizen or subject of a belligerent who, being transiently within the jurisdiction of the United States, shall, on board of any ship of war, which, at the time of its arrival within the jurisdiction of the United States, was fitted and equipped as such ship of war, enlist or enter himself or hire or retain another subject or citizen of the same belligerent, who is transiently within the jurisdiction of the United States, to enlist or enter himself to serve such belligerent on board such ship of war, if the United States shall then be at peace with such belligerent.)

8. Fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or knowingly being concerned in the furnishing, fitting out, or arming of any ship

or vessel with intent that such ship or vessel shall be employed in the service of one of the said belligerents to cruise, or commit hostilities against the subjects, citizens, or property of an opposing belligerent.

9. Issuing or delivering a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid.

10. Increasing or augmenting, or procuring to be increased or augmented, or knowingly being concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which at the time of her arrival within the jurisdiction of the United States was a ship of war, cruiser, or armed vessel in the service of a belligerent, or belonging to a national thereof, by adding to the number of guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by the addition thereto of any equipment solely applicable to war.

11. Knowingly beginning or setting on foot or providing or preparing a means for or furnishing the money for, or taking part in, any military or naval expedition or enterprise to be carried on from the territory or jurisdiction of the United States against the territory or dominion of a belligerent.

12. Despatching from the United States, or any place subject to the jurisdiction thereof, any vessel, domestic or foreign, which is about to carry to a warship, tender, or supply ship of a belligerent any fuel, arms, ammunition, men, supplies, despatches, or information shipped or received on board within the jurisdiction of the United States.

13. Despatching from the United States, or any place subject to the jurisdiction thereof, any armed vessel owned wholly or in part by American citizens, or any vessel, domestic or foreign (other than one which has entered the jurisdiction of the United States as a public vessel), which is manifestly built for warlike purposes or has been converted or adapted from a private vessel to one suitable for warlike use, and which is to be employed to cruise against or commit or attempt to commit hostilities upon the subjects, citizens, or property of a belligerent nation, or which will be sold or delivered to a belligerent nation, or to an

agent, officer, or citizen thereof, within the jurisdiction of the United States, or, having left that jurisdiction, upon the high seas.

14. Despatching from the United States, or any place subject to the jurisdiction thereof, any vessel built, armed, or equipped as a ship of war, or converted from a private vessel into a ship of war (other than one which has entered the jurisdiction of the United States as a public vessel), with any intent or under any agreement or contract, written or oral, that such vessel shall be delivered to a belligerent nation, or to any agent, officer, or citizen of such nation, or where there is reasonable cause to believe that the said vessel shall or will be employed in the service of such belligerent nation after its departure from the jurisdiction of the United States.

15. Taking, or attempting or conspiring to take, or authorizing the taking of any vessel out of port or from the jurisdiction of the United States in violation of the said act of the 15th day of June, A. D. 1917, as set forth in the preceding paragraphs numbered 11 to 14 inclusive.

16. Leaving or attempting to leave the jurisdiction of the United States by a person belonging to the armed land or naval forces of a belligerent who shall have been interned within the jurisdiction of the United States in accordance with the law of nations, or leaving or attempting to leave the limits of internment in which freedom of movement has been allowed, without permission from the proper official of the United States in charge, or wilfully overstaying a leave of absence granted by such official.

17. Aiding or enticing any interned person to escape or attempt to escape from the jurisdiction of the United States, or from the limits of internment prescribed.

AND I do hereby further declare and proclaim that any frequenting and use of the waters within the territorial jurisdiction of the United States by the vessels of a belligerent, whether public ships or privateers for the purpose of preparing for hostile operations, or as posts of observation upon the ships of war or privateers or merchant vessels of an opposing belligerent must be regarded as unfriendly and offensive, and in violation of that neutrality which it is

the determination of this government to observe; and to the end that the hazard and inconvenience of such apprehended practices may be avoided, I further proclaim and declare that from and after the fifth day of September instant, and so long as this proclamation shall be in effect, no ship of war or privateer of any belligerent shall be permitted to make use of any port, harbor, roadstead, or waters subject to the jurisdiction of the United States as a station or place of resort for any warlike purpose or for the purpose of obtaining warlike equipment; no privateer of a belligerent shall be permitted to depart from any port, harbor, roadstead, or waters subject to the jurisdiction of the United States; and no ship of war of a belligerent shall be permitted to sail out of or leave any port, harbor, roadstead, or waters subject to the jurisdiction of the United States from which a vessel of an opposing belligerent (whether the same shall be a ship of war or a merchant ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the jurisdiction of the United States.

If any ship of war of a belligerent shall, after the time this notification takes effect, be found in, or shall enter any port, harbor, roadstead, or waters subject to the jurisdiction of the United States, such vessel shall not be permitted to remain in such port, harbor, roadstead, or waters more than twenty-four hours, except in case of stress of weather, or for delay in receiving supplies or repairs, or when detained by the United States; in any of which cases the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as the cause of the delay is at an end, unless within the preceding twenty-four hours a vessel, whether ship of war or merchant ship of an opposing belligerent, shall have departed therefrom, in which case the time limited for the departure of such ship of war shall be extended so far as may be necessary to secure an interval of not less than twenty-four hours between such departure and that of any ship of war or merchant ship of an opposing belligerent which may have previously quit the same port, harbor, roadstead, or waters.

Vessels used exclusively for scientific, religious, or philanthropic purposes are exempted from the foregoing pro-

visions as to the length of time ships of war may remain in the ports, harbors, roadsteads, or waters subject to the jurisdiction of the United States.

The maximum number of ships of war belonging to a belligerent and its allies which may be in one of the ports, harbors, or roadsteads subject to the jurisdiction of the United States simultaneously shall be three.

When ships of war of opposing belligerents are present simultaneously in the same port, harbor, roadstead, or waters, subject to the jurisdiction of the United States, the one entering first shall depart first, unless she is in such condition as to warrant extending her stay. In any case the ship which arrived later has the right to notify the other through the competent local authority that within twenty-four hours she will leave such port, harbor, roadstead, or waters, the one first entering, however, having the right to depart within that time. If the one first entering leaves, the notifying ship must observe the prescribed interval of twenty-four hours. If a delay beyond twenty-four hours from the time of arrival is granted, the termination of the cause of delay will be considered the time of arrival in deciding the right of priority in departing.

Vessels of a belligerent shall not be permitted to depart successively from any port, harbor, roadstead, or waaters subject to the jurisdiction of the United States at such intervals as will delay the departure of a ship of war of an opposing belligerent from such ports, harbors, roadsteads, or waters for more than twenty-four hours beyond her desired time of sailing. If, however, the departure of several ships of war and merchant ships of opposing belligerents from the same port, harbor, roadstead, or waters is involved, the order of their departure therefrom shall be so arranged as to afford the opportunity of leaving alternately to the vessels of the opposing belligerents, and to cause the least detention consistent with the objects of this proclamation.

All belligerent vessels shall refrain from use of their radio and signal apparatus while in the harbors, ports, roadsteads, or waters subject to the jurisdiction of the United States, except for calls of distress and communications connected with safe navigation or arrangements for the arrival

of the vessel within, or departure from, such harbors, ports, roadsteads, or waters, or passage through such waters; provided that such communications will not be of direct material aid to the belligerent in the conduct of military operations against an opposing belligerent. The radio of belligerent merchant vessels may be sealed by the authorities of the United States, and such seals shall not be broken within the jurisdiction of the United States except by proper authority of the United States.

No ship of war of a belligerent shall be permitted, while in any port, harbor, roadstead, or waters subject to the jurisdiction of the United States, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew in amounts necessary to bring such supplies to her peace standard, and except such fuel, lubricants, and feed water only as may be sufficient, with that already on board, to carry such vessel, if without any sail power, to the nearest port of her own country; or in case a vessel is rigged to go under sail, and may also be propelled by machinery, then half the quantity of fuel, lubricants, and feed water which she would be entitled to have on board, if dependent upon propelling machinery alone, and no fuel, lubricants, or feed water shall be again supplied to any such ship of war in the same or any other port, harbor, roadstead, or waters subject to the jurisdiction of the United States until after the expiration of three months from the time when such fuel, lubricants and feed water may have been last supplied to her within waters subject to the jurisdiction of the United States. The amounts of fuel, lubricants, and feed water allowable under the above provisions shall be based on the economical speed of the vessel, plus an allowance of thirty per centum for eventualities.

No ship of war of a belligerent shall be permitted, while in any port, harbor, roadstead, or waters subject to the jurisdiction of the United States, to make repairs beyond those that are essential to render the vessel seaworthy and which in no degree constitute an increase in her military strength. Repairs shall be made without delay. Damages which are found to have been produced by the enemy's fire shall in no case be repaired.

No ship of war of a belligerent shall effect repairs or receive fuel, lubricants, feed water, or provisions within the jurisdiction of the United States without written authorization of the proper authorities of the United States. Before such authorization will be issued, the commander of the vessel shall furnish to such authorities a written declaration, duly signed by such commander, stating the date, port, and amounts of supplies last received in the jurisdiction of the United States, the amounts of fuel, lubricants, feed water, and provisions on board, the port to which the vessel is proceeding, the economical speed of the vessel, the rate of consumption of fuel, lubricants, and feed water at such speed, and the amount of each class of supplies desired. If repairs are desired, a similar declaration shall be furnished stating the cause of the damage and the nature of the repairs. In either case, a certificate shall be included to the effect that the desired services are in accord with the rules of the United States in that behalf.

No agency of the United States Government shall, directly or indirectly, provide supplies nor effect repairs to a belligerent ship of war.

No vessel of a belligerent shall exercise the right of search within the waters under the jurisdiction of the United States, nor shall prizes be taken by belligerent vessels within such waters. Subject to any applicable treaty provisions in force, prizes captured by belligerent vessels shall not enter any port, harbor, roadstead, or waters under the jurisdiction of the United States except in case of unseaworthiness, stress of weather, or want of fuel or provisions; when the cause has disappeared, the prize must leave immediately, and if a prize captured by a belligerent vessel enters any port, harbor, roadstead, or waters subject to the jurisdiction of the United States for any other reason than on account of unseaworthiness, stress of weather, or want of fuel or provisions, or fails to leave as soon as the circumstances which justified the entrance are at an end, the prize with its officers and crew will be released and the prize crew will be interned. A belligerent Prize Court cannot be set up on territory subject to the jurisdiction of the United States or on a vessel in the ports, harbors, roadsteads, or waters subject to the jurisdiction of the United States.

The provisions of this proclamation pertaining to ships of war shall apply equally to any vessel operating under public control for hostile or military purposes.

AND I do further declare and proclaim that the statutes and the treaties of the United States and the law of nations alike require that no person, within the territory and jurisdiction of the United States, shall take part, directly or indirectly, in the said war, but shall remain at peace with all of the said belligerents, and shall maintain a strict and impartial neutrality.

AND I do further declare and proclaim that the provisions of this proclamation shall apply to the Canal Zone except in so far as such provisions may be specifically modified by a proclamation or proclamations issued for the Canal Zone.

AND I do hereby enjoin all nationals of the United States, and all persons residing or being within the territory or jurisdiction of the United States, to observe the laws thereof, and to commit no act contrary to the provisions of the said statutes or treaties or in violation of the law of nations in that behalf.

AND I do hereby give notice that all nationals of the United States and others who may claim the protection of this government, who may misconduct themselves in the premises, will do so at their peril, and that they can in no wise obtain any protection from the government of the United States against the consequences of their misconduct.

This proclamation shall continue in full force and effect unless and until modified, revoked or otherwise terminated, pursuant to law.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the city of Washington this fifth day of September in the year of our Lord nineteen hundred and
[SEAL] thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

FRANKLIN D. ROOSEVELT

By the President:
CORDELL HULL
Secretary of State.

IV. Regulations Governing the Enforcement of Neutrality.

(Dept. of State, Executive Order, No. 380, September 5, 1939.)

WHEREAS, under the treaties of the United States and the law of nations it is the duty of the United States, in any war in which the United States is a neutral, not to permit the commission of unneutral acts within the jurisdiction of the United States;

AND WHEREAS, a proclamation was issued by me on the fifth day of September declaring the neutrality of the United States of America in the war now existing between Germany and France; Poland; and the United Kingdom, India, Australia and New Zealand:

NOW, THEREFORE, in order to make more effective the enforcement of the provisions of said treaties, law of nations, and proclamation, I hereby prescribe that, during said war, the departments and independent offices and establishments of the United States Government shall have the following duties to perform in enforcing the neutrality of the United States, which duties shall be in addition to the duties now prescribed, or hereafter prescribed, by law, or by other executive order or regulation not in conflict herewith, for the departments and independent offices and establishments of the United States Government:

1. *War Department*: Enforcement of the neutrality of the United States as prescribed in the above-mentioned proclamation so far as concerns the military land forces of neutral and belligerent powers; except as provided in paragraphs numbered 2b and 4 hereof.

2. *Navy Department*: Enforcement of the neutrality of the United States as prescribed in the above-mentioned proclamation, (a) so far as concerns vessels of the naval establishments of neutral and belligerent powers and other vessels operating for hostile or military purposes, except as provided in paragraph numbered 4 hereof; (b) enforcement of the neutrality of the United States as prescribed in said proclamation in outlying possessions subject to the exclusive jurisdiction of the Navy Department; (c) in the

Philippine Islands, enforcement of the neutrality of the United States as respects all vessels as prescribed in said proclamation, with the special cooperation of the Department of State and the Department of the Interior.

3. *Treasury Department and Commerce Department:* (Under such further division of responsibility as the Secretary of the Treasury and the Secretary of Commerce may mutually agree upon) Enforcement of the neutrality of the United States as prescribed in the above-mentioned proclamation so far as concerns all vessels except those referred to in paragraph numbered 2 hereof, with the special cooperation of the Department of the Interior in the territories and outlying possessions where the Treasury Department and the Commerce Department are required by law to carry out their respective functions, and except in the Philippine Islands, the Canal Zone, and the outlying possessions subject to the exclusive jurisdiction of the Navy Department.

4. *Governor of the Panama Canal:* Enforcement within the Canal Zone of the neutrality of the United States as prescribed in the above-mentioned proclamation, and administrative action in connection therewith. The military and naval forces stationed in the Canal Zone shall give him such assistance for this purpose as he may request. If an officer of the Army shall be designated to assume authority and jurisdiction over the operation of the Panama Canal as provided in Section 8 of Title 2 of the Canal Zone Code, such officer of the Army shall thereafter have the duties above assigned to the Governor of the Panama Canal.

5. *Department of Justice:* Enforcement of the neutrality of the United States as prescribed in the above-mentioned proclamation, not especially delegated to other departments, independent offices and establishments of the United States Government, and prosecution of violations of the neutrality of the United States.

6. *All Departments and Independent Offices and Establishments of the United States:* Enforcement of neutrality in connection with their own activities, furnishing information to, and assisting all other departments and independent offices and establishments of the United States Gov-

ernment in connection with the duties herein assigned; and issuing rules and regulations necessary for carrying out the duties herein assigned.

V. Proclamation (Special): Export of Arms, Ammunition, and Implements of War September 5, 1939.

(4 Federal Register, 3819: Revoked by Proclamation No. 2374, November 4, 1939.)

WHEREAS section 1 of the joint resolution of Congress approved May 1, 1937, provides in part as follows:

"Whenever the President shall find that there exists a state of war between, or among, two or more foreign states, the President shall proclaim such fact, and it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from any place in the United States to any belligerent state named in such proclamation, or to any neutral state for transshipment to, or for the use of, any such belligerent state."

AND WHEREAS it is further provided by section 1 of the said joint resolution that

"The President shall, from time to time by proclamation, definitely enumerate the arms, ammunition, and implements of war, the export of which is prohibited by this section. The arms, ammunition, and implements of war so enumerated shall include those enumerated in the President's proclamation Numbered 2163, of April 10, 1936, but shall not include raw materials or any other articles or materials not of the same general character as those enumerated in the said proclamation, and in the Convention for the Supervision of the Internationl Trade in Arms and Ammunition and in Implements of War, signed at Geneva June 17, 1925."

AND WHEREAS it is further provided by section 1 of the said joint resolution that

"Whoever, in violation of any of the provisions of this Act, shall export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from the United States shall be fined not more than $10,000 or imprisoned not more than five years, or both, and the property, vessel, or vehicle containing the same shall be subject to the

provisions of sections 1 to 8, inclusive, title 6, chapter 30, of the Act approved June 15, 1917 (40 Stat. 223–225; U. S. C., 1934 ed., title 22, secs. 238–245)."

AND WHEREAS it is further provided by section 1 of the said joint resolution that

"In the case of the forfeiture of any arms, ammunition, or implements of war by reason of a violation of this Act, no public or private sale shall be required; but such arms, ammunition, or implements of war shall be delivered to the Secretary of War for such use or disposal thereof as shall be approved by the President of the United States."

AND WHEREAS it is further provided by section 11 of the said joint resolution that

"The President may, from time to time, promulgate such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out any of the provisions of this Act; and he may exercise any power or authority conferred on him by this Act through such officer or officers, or agency or agencies, as he shall direct."

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority conferred on me by the said joint resolution, do hereby proclaim that a state of war unhappily exists between Germany and France; Poland; and the United Kingdom, India, Australia and New Zealand, and I do hereby admonish all citizens of the United States, or any of its possessions, and all persons residing or being within the territory or jurisdiction of the United States, or its possessions, to abstain from every violation of the provisions of the joint resolution above set forth, hereby made effective and applicable to the export of arms, ammunition, or implements of war from any place in the United States or any of its possessions to France; Germany; Poland; or the United Kingdom, India, Australia and New Zealand, or to any other state for transshipment to, or for the use of, France; Germany; Poland; or the United Kingdom, India, Australia and New Zealand.

And I do hereby declare and proclaim that the articles enumerated below shall be considered arms, ammunition, and implements of war for the purposes of section 1 of the said joint resolution of Congress:

CATEGORY I

(1) Rifles and carbines using ammunition in excess of caliber .22, and barrels for those weapons;

(2) Machine guns, automatic or autoloading rifles, and machine pistols using ammunition in excess of caliber .22, and barrels for those weapons;

(3) Guns, howitzers, and mortars of all calibers, their mountings and barrels;

(4) Ammunition in excess of caliber .22 for the arms enumerated under (1) and (2) above, and cartridge cases or bullets for such ammunition; filled and unfilled projectiles for the arms enumerated under (3) above;

(5) Grenades, bombs, torpedoes, mines and depth charges, filled or unfilled, and apparatus for their use or discharge;

(6) Tanks, military armored vehicles, and armored trains.

CATEGORY II

Vessels of war of all kinds, including aircraft carriers and submarines, and armor plate for such vessels.

CATEGORY III

(1) Aircraft, unassembled, assembled, or dismantled, both heavier and lighter than air, which are designed, adapted, and intended for aerial combat by the use of machine guns or of artillery or for the carrying and dropping of bombs, or which are equipped with, or which by reason of design or construction are prepared for, any of the appliances referred to in paragraph (2) below;

(2) Aerial gun mounts and frames, bomb racks, torpedo carriers, and bomb or torpedo release mechanisms.

CATEGORY IV

(1) Revolvers and automatic pistols using ammunition in excess of caliber .22;

(2) Ammunition in excess of caliber .22 for the arms enumerated under (1) above, and cartridge cases or bullets for such ammunition.

CATEGORY V

(1) Aircraft, unassembled, assembled or dismantled, both heavier and lighter than air, other than those included in Category III.

(2) Propellers or air screws, fuselages, hulls, wings, tail units, and under-carriage units;

(3) Aircraft engines, unassembled, assembled, or dismantled.

CATEGORY VI

(1) Livens projectors and flame throwers;

(2) a. Mustard gas (dichlorethyl sulphide);
b. Lewisite (chlorvinyldichlorarsine and dichlordivinylchlorarsine);
c. Methyldichlorarsine;
d. Diphenylchlorarsine;
e. Diphenylcyanarsine;
f. Diphenylaminechlorarsine;
g. Phenyldichlorarsine;
h. Ethyldichlorarsine;
i. Phenyldibromarsine;
j. Ethyldibromarsine;
k. Phosgene;
l. Monochlormethylchlorformate;
m. Trichlormethylchlorformate (diphosgene);
n. Dichlordimethyl Ether;
o. Dibromdimethyl Ether;
p. Cyanogen Chloride;
q. Ethylbromacetate;
r. Ethyliodoacetate;
s. Brombenzylcyanide;
t. Bromacetone;
u. Brommethylethyl ketone.

CATEGORY VII

(1) Propellant powders;

(2) High explosives as follows:
a. Nitrocellulose having a nitrogen content of more than 12 percent;
b. Trinitrotoluene;

(2) High explosives—Continued.

c. Trinitroxylene;
d. Tetryl (trinitrophenol methyl nitramine or tetranitro methylaniline);
e. Picric acid;
f. Ammonium picrate;
g. Trinitroanisol;
h. Trinitronaphthalene;
i. Tetranitronaphthalene;
j. Hexanitrodiphenylamine;
k. Pentaerythritetetranitrate (Penthrite or Pentrite);
l. Trimethylenetrinitramine (Hexogen or T_4);
m. Potassium nitrate powders (black saltpeter powder);
n. Sodium nitrate powders (black soda powder);
o. Amatol (mixture of ammonium nitrate and trinitrotoluene);
p. Ammonal (mixture of ammonium nitrate, trinitrotoluene, and powdered aluminum, with or without other ingredients);
q. Schneiderite (mixture of ammonium nitrate and dinitronaphthalene, with or without other ingredients).

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution, and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

And I do hereby delegate to the Secretary of State the power to exercise any power or authority conferred on me by the said joint resolution, as made effective by this my proclamation issued thereunder, and the power to promulgate such rules and regulations not inconsistent with law as may be necessary and proper to carry out any of its provisions.

In witness whereof, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this fifth day of September, in the year of our Lord nineteen hundred
[SEAL] and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

FRANKLIN D. ROOSEVELT

By the President:
CORDELL HULL
Secretary of State.

VI. Regulations Concerning Neutrality in the Canal Zone.

(Dept. of State, Executive Order, No. 390, September 5, 1939.)

WHEREAS a proclamation having been issued by me on the fifth day of September instant declaring the neutrality of the United States of America in the war now existing between Germany and France; Poland; the United Kingdom, India, Australia and New Zealand;

AND WHEREAS the provisions of the said proclamation apply to the Canal Zone except in so far as such provisions may be modified by a proclamation issued for the Canal Zone;

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do declare and proclaim that, from and after the fifth day of September instant, the said proclamation issued by me on the fifth day of September instant, in its application to the Canal Zone, is hereby modified as follows:

1. The limit of twenty-four hours prescribed by the above proclamation, with certain exceptions, as the maximum time a belligerent ship of war may remain within the jurisdiction of the United States shall apply to the total time such ship of war may remain in all the waters of the Canal Zone, except that the time required to transit the Canal shall be in addition to the prescribed twenty-four hours. Such transit shall be effected with the least possible delay in accordance with the Canal regulations in force, and only with such intermission as may result from the necessities of the service.

2. The maximum number of ships of war belonging to a belligerent and its allies which may be simultaneously in either terminal port and the terminal waters adjacent to such

port shall be three. The maximum number of such vessels in all the waters of the Canal Zone simultaneously, including those in transit through the Canal, shall be six.

3. Belligerent ships of war, not carrying aircraft, departing from the jurisdiction of the Canal Zone from one of the terminal ports shall not be required to observe the prescribed interval of time between such departure and the departure from such jurisdiction of a vessel of an opposing belligerent from the other terminal port.

4. The time of original arrival of vessels within the jurisdiction of the Canal Zone, whether or not they transit the Canal, shall be used as the time of arrival in deciding the right of priority, between vessels of opposing belligerents, in departing from the jurisdiction of the Canal Zone.

5. If a belligerent ship of war which has left the waters of the Canal Zone, whether she has transitted the Canal or not, returns within a period of one week after her departure, she shall lose all right of priority in departure from the Canal Zone, or in passage through the Canal, over vessels of an opposing belligerent which may enter those waters after her return and before the expiration of one week subsequent to her previous departure. In any such case, the time of departure of a vessel which has so returned shall be fixed by the Canal authorities, who may in so doing consider the wishes of the commander or master of a vessel or vessels of an opposing belligerent then present within the waters of the Canal Zone.

6. If it is wholly impossible, as determined by the Governor of the Panama Canal, for a belligerent ship of war to effect repairs through, or to obtain fuel, lubricants, feed water, and provisions from, a private contractor within the Canal Zone or the Republic of Panama, the agencies of the United States administered by the Canal authorities may, in order to facilitate the operation of the Canal or its appurtenances, effect such repairs and furnish such supplies in accordance with the Canal regulations in force, but when repairs and supplies are so obtained they shall be limited to such repairs and such amounts of fuel, lubricants, feed water, and provisions, with that already on board, as may be necessary to enable the vessel to proceed to the nearest

accessible port, not an enemy port, in the general direction of her voyage, at which she can obtain further repairs or supplies necessary for the continuation of the voyage. The amounts of fuel, lubricants, feed water, and provisions so received shall be deducted from the amounts otherwise allowed in ports, harbors, roadsteads, and waters subject to the jurisdiction of the United States, including the Canal Zone, during any time within a period of three months thereafter. No public vessel of a belligerent shall receive fuel or lubricants while within the territorial waters of the Canal Zone except under written authorization of the Canal Authorities, specifying the amount of fuel and lubricants which may be received. Moreover, the repair facilities and docks belonging to the United States and administered by the Canal Authorities shall not be used by a public vessel of a belligerent, except when necessary in case of actual distress, and then only upon the order of the Canal Authorities, and only to the degree necessary to render the vessel seaworthy. Any work authorized shall be done with the least possible delay.

7. In the Canal Zone, prizes shall be in all respects subject to the same rules as ships of war of the belligerents.

And I do further declare and proclaim that, from and after the fifth day of September instant, the following additional provisions shall be effective in the Canal Zone:

1. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the Canal Zone, except when required by the Canal authorities, or in case of accidental hindrance of the transit. In such cases the Canal authorities shall be the judges of the necessity, and the transit shall be resumed with all dispatch.

2. No belligerent aircraft shall be navigated into, within, or through the air spaces above the territory or waters of the Canal Zone.

3. The enforcement of neutrality of the United States within the Canal Zone and administrative action in connection therewith shall be the responsibility of the Governor of the Panama Canal; and the military and naval forces stationed in the Canal Zone shall give him such assistance for this purpose as he may request; provided that, if an

officer of the Army is designated to assume authority and jurisdiction over the operation of the Panama Canal as provided in Section 8 of Title 2 of the Canal Zone Code, such officer of the Army shall thereafter have such responsibility.

AND I do further declare and proclaim that the provisions of this proclamation and the provisions of the proclamation of the fifth day of September instant are in addition to the "Rules and Regulations for the Operation and Navigation of the Panama Canal and Approaches Thereto, including all Waters under its jurisdiction" prescribed by Executive Order No. 4314, of September 25, 1925, as amended.

This proclamation shall continue in full force and effect unless and until modified, revoked, or otherwise terminated pursuant to law.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the city of Washington this fifth day of September, in the year of our Lord nineteen hundred and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL

Secretary of State.

VII. Regulations Governing the Passage of Vessels Through the Panama Canal.

(Dept. of State, Executive Order, No. 391, September 5, 1939.)

WHEREAS the treaties of the United States, in any war in which the United States is a neutral, impose on the United States certain obligations to both neutral and belligerent nations;

AND WHEREAS the treaties of the United States, in any war in which the United States is a neutral, require that the United States exert all the vigilance within their power to carry out their obligations as a neutral;

AND WHEREAS treaties of the United States require that the Panama Canal shall be free and open, on terms of entire

equality, to the vessels of commerce and of war of all nations observing the rules laid down in Article 3 of the so-called Hay-Pauncefote treaty concluded between the United States and Great Britain, November 18, 1901;

NOW, THEREFORE, by virtue of the authority vested in me by section 5 of the Panama Canal Act, approved August 24, 1912 (ch. 390, sec. 5, 37 Stat. 562), as amended by the act of July 5, 1932 (ch. 425, 47 Stat. 578), I hereby prescribe the following regulations governing the passage and control of vessels through the Panama Canal or any part thereof, including the locks and approaches thereto, in any war in which the United States is a neutral;

1. Whenever considered necessary, in the opinion of the Governor of the Panama Canal, to prevent damage or injury to vessels or to prevent damage or injury to the Canal or its appurtenances, or to secure the observance of the rules, regulations, rights, or obligations of the United States, the Canal authorities may at any time, as a condition precedent to transit of the Canal, inspect any vessel, belligerent or neutral, other than a public vessel, including its crew and cargo, and, for and during the passage through the Canal, place armed guards thereon, and take full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not specially authorized by the Canal authorities to go or remain on board thereof during such passage.

2. A public vessel of a belligerent or neutral nation shall be permitted to pass through the Canal only after her commanding officer has given written assurance to the authorities of the Panama Canal that the rules, regulations, and treaties of the United States will be faithfully observed.

The foregoing regulations are in addition to the "Rules and Regulations for the Operation and Navigation of the Panama Canal and Approaches Thereto, including all Waters under its Jurisdiction" prescribed by Executive Order No. 4314 of September 25, 1925, as amended, and the provisions of proclamations and executive orders pertaining to the Canal Zone issued in conformity with the laws and treaties of the United States.

FRANKLIN D. ROOSEVELT

VIII. Proclamation of a National Emergency.

(Dept. of States, Executive Order No. 410, September 8, 1939.)

WHEREAS a proclamation issued by me on September 5, 1939, proclaimed the neutrality of the United States in the war now unhappily existing between certain nations; and

WHEREAS this state of war imposes on the United States certain duties with respect to the proper observance, safeguarding, and enforcement of such neutrality, and the strengthening of the national defense within the limits of peace-time authorizations; and

WHEREAS measures required at this time call for the exercise of only a limited number of the powers granted in a national emergency:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do proclaim that a national emergency exists in connection with and to the extent necessary for the proper observance, safeguarding, and enforcing of the neutrality of the United States and the strengthening of our national defense within the limits of peace-time authorizations. Specific directions and authorizations will be given from time to time for carrying out these two purposes.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this eighth day of September, in the year of our Lord nineteen hundred
[L. S.] and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

FRANKLIN D. ROOSEVELT

By the President:
CORDELL HULL
Secretary of State.

IX. Proclamation of a State of War Under Act of November 4, 1939.

(Proclamation No. 2374, 4 Federal Register, 4493.)

WHEREAS section 1 of the joint resolution of Congress approved November 4, 1939, provides in part as follows:

"That whenever the President, or the Congress by concurrent resolution, shall find that there exists a state of war between foreign states, and that it is necessary to promote the security or preserve the peace of the United States or to protect the lives of citizens of the United States, the President shall issue a proclamation naming the states involved; and he shall, from time to time, by proclamation, name other states as and when they may become involved in the war."

AND WHEREAS it is further provided by section 13 of the said joint resolution that

"The President may, from time to time, promulgate such rules and regulations, not inconsistent with law as may be necessary and proper to carry out any of the provisions of this joint resolution; and he may exercise any power or authority conferred on him by this joint resolution through such officer or officers, or agency or agencies, as he shall direct."

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority conferred on me by the said joint resolution, do hereby proclaim that a state of war unhappily exists between Germany and France; Poland; and the United Kingdom, India, Australia, Canada, New Zealand and the Union of South Africa, and that it is necessary to promote the security and preserve the peace of the United States and to protect the lives of citizens of the United States.

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution and in bringing to trial and punishment any offenders against the same.

And I do hereby delegate to the Secretary of State the power to exercise any power or authority conferred on me by the said joint resolution, as made effective by this my procla-

mation issued thereunder, which is not specifically delegated by Executive order to some other officer or agency of this Government, and the power to promulgate such rules and regulations not inconsistent with law as may be necessary and proper to carry out any of its provisions.

And I do hereby revoke my proclamations nos. 2349, 2354, and 2360 issued on September 5, 8, and 10, 1939, respectively, in regard to the export of arms, ammunition, and implements of war to France; Germany; Poland; and the United Kingdom, India, Australia, and New Zealand; to the Union of South Africa; and to Canada.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this fourth day of November, in the year of our Lord nineteen hundred and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth, at 12.04 P. M.

[SEAL]

FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL

Secretary of State.

X. Proclamation Defining Combat Areas.

(Dept. of State Bulletin, Vol. I, No. 19, November 4, 1939, pp. 454–455.)

WHEREAS section 3 of the joint resolution of Congress approved November 4, 1939, provides as follows:

"(a) Whenever the President shall have issued a proclamation under the authority of section 1 (a), and he shall thereafter find that the protection of citizens of the United States so requires, he shall, by proclamation, define combat areas, and thereafter it shall be unlawful, except under such rules and regulations as may be prescribed, for any citizen of the United States or any American vessel to proceed into or through any such combat area. The combat areas so defined may be made to apply to surface vessels or aircraft, or both.

"(b) In case of the violation of any of the provisions of this section by any American vessel, or any owner or officer thereof, such vessel, owner, or officer shall be fined not more than

$50,000 or imprisoned for not more than five years, or both. Should the owner of such vessel be a corporation, organization, or association, each officer or director participating in the violation shall be liable to the penalty hereinabove prescribed. In case of the violation of this section by any citizen traveling as a passenger, such passenger, may be fined not more than $10,000 or imprisoned for not more than two years or both.

"(c) The President may from time to time modify or extend any proclamation issued under the authority of this section, and when the conditions which shall have caused him to issue any such proclamation shall have ceased to exist he shall revoke such proclamation and the provisions of this section shall thereupon cease to apply, except as to offenses committed prior to such revocation."

AND WHEREAS it is further provided by section 13 of the said joint resolution that—

"The President may, from time to time, promulgate such rules and regulations, not inconsistent with law as may be necessary and proper to carry out any of the provisions of this joint resolution; and he may exercise any power or authority conferred on him by this joint resolution through such officer or officers, or agency or agencies, as he shall direct."

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority conferred on me by the said joint resolution, do hereby find that the protection of citizens of the United States requires that there be defined a combat area through or into which it shall be unlawful, except under such rules and regulations as may be prescribed, for any citizen of the United States or any American vessel, whether a surface vessel or an aircraft, to proceed.

AND I do hereby define such combat area as follows:

All the navigable waters within the limits set forth hereafter.

Beginning at the intersection of the North Coast of Spain with the meridian of 2°45′ longitude west of Greenwich;

Thence due north to a point in 43°54′ north latitude;

Thence by rhumb line to a point in 45°00′ north latitude; 20°00′ west longitude;

Thence due north to 58°00′ north latitude;

Thence by a rhumb line to latitude 62° north, longitude 2° east;

Thence by a rhumb line to latitude 60° north, longitude 5° east;

Thence due east to the mainland of Norway;

Thence along the coast line of Norway, Sweden, the Baltic Sea and dependent waters thereof, Germany, Denmark, the Netherlands, Belgium, France and Spain to the point of beginning.

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution and in bringing to trial and punishment any offenders against the same.

And I do hereby delegate to the Secretary of State the power to exercise any power or authority conferred on me by the said joint resolution as made effective by this my proclamation issued thereunder, which is not specifically delegated by Executive order to some other officer or agency of this Government, and the power to promulgate such rules and regulations not inconsistent with law as may be necessary and proper to carry out any of its provisions.

In witness whereof, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

Done at the city of Washington this fourth day of November, in the year of our Lord nineteen hundred and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth, at 3 p.m.

[seal]

FRANKLIN D. ROOSEVELT

By the President:

Cordell Hull

Secretary of State.

XII. Regulations Concerning Travel on Belligerent Vessels.

(Dept. of State Bulletin, Vol. No. 20, November 11, 1939, pp. 480–481.)

Section 5 of the joint resolution of Congress approved November 4, 1939, provides as follows:

"(a) Whenever the President shall have issued a proclamation under the authority of section 1 (a) it shall thereafter be unlawful for any citizen of the United States to travel on any vessel of any state named in such proclamation, except in accordance with such rules and regulations as may be prescribed.

"(b) Whenever any proclamation issued under the authority of section 1 (a) shall have been revoked with respect to any state the provisions of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation."

Section 15 of the said joint resolution provides as follows:

"In every case of the violation of any of the provisions of this joint resolution or of any rule or regulation issued pursuant thereto where a specific penalty is not herein provided, such violator or violators, upon conviction, shall be fined not more than $10,000, or imprisoned not more than two years, or both."

On November 4, 1939, the President issued a proclamation in respect to France; Germany; Poland; and the United Kingdom, India, Australia, Canada, New Zealand, and the Union of South Africa under the authority of section 1 of the said joint resolution, thereby making effective in respect to these countries the provisions of section 5 of the said joint resolution quoted above.

Section 13 of the said joint resolution provides as follows:

"The President may, from time to time, promulgate such rules and regulations, not inconsistent with law as may be necessary and proper to carry out any of the provisions of this joint resolution; and he may exercise any power or authority conferred on him by this joint resolution through such officer or officers, or agency or agencies, as he shall direct."

The President's proclamation of November 4, 1939, issued pursuant to the provisions of section 1 of the above-mentioned joint resolution provides in part as follows:

"And I do hereby delegate to the Secretary of State the power to exercise any power or authority conferred on me by the said joint resolution, as made effective by this my proclamation issued thereunder, which is not specifically delegated by Executive order to some other officer or agency of this Government, and the power to promulgate such rules and regulations not inconsistent with law as may be necessary and proper to carry out any of its provisions."

In pursuance of those provisions of the law and of the President's proclamation of November 4, 1939, which are quoted above, the Secretary of State announces the following regulations:

American diplomatic and consular officers and their families, members of their staffs and their families, and American military and naval officers and personnel and their families may travel pursuant to orders on vessels of France; Germany; Poland; or the United Kingdom, India, Australia, Canada, New Zealand and the Union of South Africa if the public service requires.

Other American citizens may travel on vessels of France; Germany; Poland; or the United Kingdom, India, Australia, Canada, New Zealand and the Union of South Africa, provided, however, that travel on or over the north Atlantic Ocean north of 35 degrees north latitude and east of 66 degrees west longitude or on or over other waters adjacent to Europe or over the continent of Europe or adjacent islands shall not be permitted except when specifically authorized by the Secretary of State in each case.

CORDELL HULL,
Secretary of State.

NOVEMBER 6, 1939.

XIII. Regulations concerning Arms on American Vessels.

(Dept. of State Bulletin, Vol. I, No. 20, November 11, 1939, pp. 481–482.)

Regulations Under Section 6 of the Joint Resolution of Congress Approved November 4, 1939

Section 6 of the joint resolution of Congress approved November 4, 1939, provides as follows:

"Whenever the President shall have issued a proclamation under the authority of section 1 (a), it shall thereafter be unlawful, until such proclamation is revoked, for any American vessel, engaged in commerce with any foreign state to be armed, except with small arms and ammunition therefor, which the President may deem necessary and shall publicly designate for the preservation of discipline aboard any such vessel."

Section 15 of the said joint resolution provides as follows:

"In every case of the violation of any of the provisions of this joint resolution or of any rule or regulation issued pursuant thereto where a specific penalty is not herein provided, such violator or violators, upon conviction, shall be fined not more that $10,000, or imprisoned not more than two years, or both."

On November 4, 1939, the President issued a proclamation in respect to France; Germany; Poland; and the United Kingdom, India, Australia, Canada, New Zealand and the Union of South Africa under the authority of section 1 of the said joint resolution, thereby making effective the provisions of section 6 of the said joint resolution quoted above.

Section 13 of the said joint resolution provides as follows:

"The President may, from time to time, promulgate such rules and regulations, not inconsistent with law as may be necessary and proper to carry out any of the provisions of this joint resolution; and he may exercise any power or authority conferred on him by this joint resolution through such officer or officers, or agency or agencies, as he shall direct."

The President's proclamation of November 4, 1939, issued pursuant to the provisions of section 1 of the above-mentioned joint resolution provides in part as follows:

"And I do hereby delegate to the Secretary of State the power to exercise any power or authority conferred upon me by the said joint resolution, as made effective by this my proclamation issued thereunder, which is not specifically delegated by Executive order to some other officer or agency of this Government, and the power to promulgate such rules and regulations not inconsistent with law as may be necessary and proper to carry out any of its provisions." In pursuance of those provisions of the law and of the President's proclamation of November 4, 1939, which are quoted above, the Secretary of State announces the following regulations: American vessels engaged in commerce with foreign states may carry such small arms and ammunition as the masters of these vessels may deem indispensable for the preservation of discipline aboard the vessels.

XIV. Flights of Belligerent Military Aircraft.

(Dept. of State, Executive Order, No. 666, December 7, 1939.)

Since the enactment of the Neutrality Act of 1939, the Department has received frequent inquiries as to whether authorization could be obtained to make fly-away deliveries of military aircraft purchased by belligerent countries. The following statement is issued with a view to clarifying the position being taken by the Department on this question:

Section 6 (a) of the Air Commerce Act of 1926, as amended, contains the following provisions: "Aircraft a part of the armed forces of any foreign nation shall not be navigated in the United States, including the Canal Zone, except in accordance with an authorization granted by the Secretary of State". The authorization referred to in this provision of law is not being granted for military aircraft purchased by belligerents since it would appear to be inconsistent with the neutral obligations of the United States to permit such aircraft to be flown within or from the territory of the United States. For the foregoing purposes, the following will be treated as military aircraft:

(1) All aircraft in Category III of the President's Proclamation of May 1, 1937, and

(2) Aircraft in Category V of the President's Proclamation of May 1, 1937, purchased by or destined for the armed forces of a foreign nation.

It should be pointed out that the above is not applicable while the legal title to the aircraft in question remains with a citizen of the United States.

XV. Regulations Concerning Travel Into Combat Areas.

(Dept. of State, Departmental Order No. 831, December 16, 1939.)

Pursuant to the authority contained in the President's Proclamations nos. 2374 and 2376 issued on November 4, 1939, in pursuance of sections 1 and 3, respectively, of the Neutrality Act of 1939, approved November 4, 1939, I, Cordell Hull, Secretary of State of the United States, hereby prescribe the following regulation, amending the regulations issued on November 6, 1939, as amended by regulation issued on November 17, 1939, relating to travel on belligerent vessels, and also amending the regulations issued on November 17, 1939, relating to travel into or through combat areas.

Individuals who possess both American nationality and a foreign nationality, and who habitually reside in the foreign state of which they are nationals, and who are using passports of such foreign state, may, while en route to and from such state, travel on a belligerent vessel across the English Channel, the Irish Sea or St. George's Channel without obtaining specific authority and without an American passport endorsed as valid for such travel. Individuals who undertake travel under the conditions indicated shall do so on the understanding that they will look for protection to the foreign state whose passport they carry.

CORDELL HULL

December 14, 1939.

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XVI. Travel on Belligerent Vessels in the Bay of Fundy.

(Department of State Bulletin, Vol. II, No. 30, January 20, 1940, p. 56.)

Following is a regulation relating to travel on belligerent vessels, which is codified under Title 22: Foreign Relations; Chapter I: Department of State; and Subchapter A: The Department, in accordance with the requirements of the *Federal Register* and the *Code of Federal Regulations:*

"Pursuant to the authority contained in the President's Proclamation No. 2374 of November 4, 1939, issued pursuant to section 1 of the Neutrality Act of 1939, I, Cordell Hull, Secretary of State of the United States, hereby prescribe the following regulation, amending the regulations issued on November 6, 1939, as amended by regulations issued on November 17, 1939, and December 14, 1939, relating to travel on belligerent vessels:

"*Part 55C—Travel*

"§ 55C.3 *American nationals in combat areas*—(g) *Travel on belligerent vessels in Bay of Fundy.* American nationals may travel on belligerent vessels in the Bay of Fundy and its dependent waters. (Sec. 1, Public Res. 54, 76th Cong., 2d sess., approved Nov. 4, 1939; Proc. No. 2374)

CORDELL HULL
Secretary of State."

"JANUARY 16, 1940."

XVII. Proclamation Defining Combat Area, April 10, 1940.

(Proclamation No. 8389, Department of State Bulletin, Vol. II, No. 42, April 13, 1940, pp. 378–379.

WHEREAS section 3 of the joint resolution of Congress approved November 4, 1939, provides as follows:

"(a) Whenever the President shall have issued a proclamation under the authority of section 1 (a), and he shall thereafter find that the protection of citizens of the United States so requires, he shall, by proclamation, define combat areas, and thereafter it shall be unlawful, except under such

rules and regulations as may be prescribed, for any citizen of the United States or any American vessel to proceed into or through any such combat area. The combat areas so defined may be made to apply to surface vessels or aircraft, or both.

"(b) In case of the violation of any of the provisions of this section by any American vessel, or any owner or officer thereof, such vessel, owner, or officer shall be fined not more than $50,000 or imprisoned for not more than five years, or both. Should the owner of such vessel be a corporation, organization, or association, each officer or director participating in the violation shall be liable to the penalty hereinabove prescribed. In case of the violation of this section by any citizen traveling as a passenger, such passenger may be fined not more than $10,000 or imprisoned for not more than two years, or both.

"(c) The President may from time to time modify or extend any proclamation issued under the authority of this section, and when the conditions which shall have caused him to issue any such proclamation shall have ceased to exist he shall revoke such proclamation and the provisions of this section shall thereupon cease to apply, except as to offenses committed prior to such revocation."

AND WHEREAS it is further provided by section 13 of the said joint resolution that

"The President may, from time to time, promulgate such rules and regulations, not inconsistent with law as may be necessary and proper to carry out any of the provisions of this joint resolution; and he may exercise any power or authority conferred on him by this joint resolution through such officer or officers, or agency or agencies, as he shall direct."

AND WHEREAS on November 4, 1939, I issued a proclamation in accordance with the provision of law quoted above defining a combat area.

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority conferred on me by section 3 of the joint resolution of Congress approved November 4, 1939, do hereby find that the protection of citizens of the United

States requires that there be an extension of the combat area defined in my proclamation of November 4, 1939, through or into which extended combat area it shall be unlawful, except under such rules and regulations as may be prescribed, for any citizen of the United States or any American vessel, whether a surface vessel or an aircraft, to proceed.

And I do hereby define the extended combat area as follows:

All the navigable waters within the limits set forth hereafter.

Beginning at the intersection of the North Coast of Spain with the meridian of 2°45′ longitude west of Greenwich;

Thence due north to a point in 43°54′ north latitude;

Thence by a rhumb line to a point in 45° north latitude, 20° west longitude;

Thence due north to 58° north latitude;

Thence by a rhumb line to a point in 76°30′ north latitude, 16°35′ east longitude;

Thence by a rhumb line to a point in 70° north latitude, 44° east longitude;

Thence due south to the mainland of the Union of Soviet Socialist Republics;

Thence along the coastline of the Union of Soviet Socialist Republics, Finland, Norway, Sweden, the Baltic Sea and dependent waters thereof, Germany, Denmark, the Netherlands, Belgium, France, and Spain to the point of beginning.

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution, and in bringing to trial and punishment any offenders against the same.

And I do hereby delegate to the Secretary of State the power to exercise any power or authority conferred on me by the said joint resolution as made effective by this my proclamation issued thereunder, which is not specifically delegated by Executive order to some other officer or agency of this Government, and the power to promulgate such rules and regulations not inconsistent with law as may be necessary and proper to carry out any of its provisions.

In witness whereof, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

Done at the City of Washington this tenth day of April, in the year of our Lord nineteen hundred and [seal] forty, and of the Independence of the United States of America the one hundred and sixty-fourth.

Franklin D. Roosevelt

By the President:

Cordell Hull

Secretary of State.

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